

United States
Circuit Court of Appeals
For the Ninth Circuit.

HELM AND SMITH SYNDICATE,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

UPON PETITION TO REVIEW A DECISION OF THE
TAX COURT OF THE UNITED STATES

FILED

MAR 3 - 1943

PAUL P. O'BRIEN,
CLERK

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HELM AND SMITH SYNDICATE,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Appearances:

For Taxpayer:

THOMAS R. DEMPSEY
WELLMAN P. THAYER
H. BENJAMIN THOMPSON
WILLIAM L. KUMLER

For Comm'r:

E. A. TONJES
R. C. WHITLEY
FRANK T. HORNER

Docket No. 107125

HELM AND SMITH SYNDICATE,
Petitioner,
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1941
May 2—Petition received and filed. Taxpayer notified. (Fee paid).
May 2—Copy of petition served on General Counsel.
June 28—Answer filed by General Counsel.
June 28—Request for hearing in Los Angeles, California filed by General Counsel.

1941

- July 8—Notice issued placing proceeding on Los Angeles, California calendar. Answer and request served.
- Dec. 24—Hearing set Feb. 2, 1942—Los Angeles, California.

1942

- Feb. 4—Hearing had before Mr. Sternhagen on merits. Submitted. Stipulation as to the facts filed. Briefs due under the rule.
- Feb. 18—Transcript of hearing Feb. 4, 1942 filed.
- Mar. 20—Motion for extension to Apr. 15, 1942 to file brief, filed by taxpayer.
- Mar. 21—Brief filed by General Counsel.
- Apr. 14—Motion for leave to file the attached brief, filed by taxpayer—Brief lodged.
- Apr. 15—Motion for leave to file the attached brief granted.
- Apr. 16—Copy of motion and brief served on General Counsel.
- June 26—Memorandum opinion rendered. Sternhagen No. 10. Decision will be entered under Rule 50. 6-27-42 copy served.
- July 24—Motion for review of decision of division by the entire Board filed by taxpayer. 7-27-42 Denied.
- July 24—Motion for leave to file brief in support of motion for review by the entire Board, brief lodged, filed by taxpayer.
- July 27—Computation of deficiency filed by General Counsel.
- July 28—Copy of motion and brief served on General Counsel.

1942

July 29—Hearing set August 26, 1942 on settlement. [1*]

Aug. 19—Notice of change of hearing to Sept. 9, 1942.

Sept. 9—Hearing had before Mr. Murdock on settlement under Rule 50. Referred to Mr. Sternhagen.

Sept. 10—Decision entered, Sternhagen, Div. No. 10.

Dec. 7—Petition for review by U. S. Circuit Court of Appeals—9th Circuit, with assignments of error filed by taxpayer.

Dec. 7—Proof of service filed by taxpayer.

Dec. 15—Designation of contents of record filed by taxpayer—with proof of service thereon. [2]

United States Board of Tax Appeals

Docket No. 107125

HELM AND SMITH SYNDICATE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The individuals grouped by the Commissioner for tax assessment purposes and described by him as

* Page numbering appearing at top of page of original certified Transcript of Record.

“Helm and Smith Syndicate” hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols: LA:IT:90D:EIS) dated February 6, 1941, and as a basis of this proceeding allege as follows:

1. The petitioner is an unincorporated group of co-owners who jointly purchased certain marginal lands, as more fully set forth hereinafter, with principal office at 1704 Chester Avenue, Bakersfield, California, c/o M. J. Davis.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit “A”) was mailed to the petitioner on February 6, 1941.

3. The taxes in controversy are income and excess profits taxes for the calendar year ending December 31, 1938, and in the amount of \$8,885.04.

4. The determination of tax set forth in the notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining that the so-called Helm and Smith Syndicate was an association taxable at corporate rates for the calendar year 1938. [3]

(b) The Commissioner erred in failing to determine that the members of the so-called Helm and Smith Syndicate were taxable as partners for the calendar year 1938.

(c) The Commissioner not only erred in determining that the so-called Helm and Smith Syndicate was an association taxable at corporate rates,

but he also erred in determining that the members thereof were engaged in doing business during the calendar year 1938.

(d) The Commissioner erred in determining that the so-called Helm and Smith Syndicate was engaged as a dealer in the purchase and sale of real property and that certain real property sold during the year 1938 constituted a part of its stock in trade.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) On or about January 8, 1937, L. G. Helm entered into two certain agreements with Miller and Lux, Inc., where the said L. G. Helm agreed to purchase 2,427.26 acres of non-contiguous property in Kern County, California. Said property was marginal land which had formerly been devoted solely to stock grazing and to the raising of some grain. Under the provisions of this contract, Mr. Helm was obliged to and did pay down 25% of the purchase price of said land at the time of executing said contract.

(b) Certain of Mr. Helm's friends became interested in the property which he had contracted to purchase and wanted to purchase undivided interests therein. However, said land was non-contiguous and was not capable of equitable division among them. There was among said group, M. J. Davis and George L. Bradford, President and Secretary, respectively, of Bakersfield Abstract Company. Pursuant to the suggestion of the said last named men,

a trust instrument was drafted by Fred E. Borton, another member of the group [4] interested in the purchase of said property, which instrument was designed to convey equal, undivided, one-ninth interests to the parties named therein and to protect the title to said property against the infirmities of death, insolvency and incapacity of the persons therein named. Said instrument, which was executed by L. G. Helm and eight other individuals named therein on June 29, 1937, provided in substance as follows:

(1) It recited that L. G. Helm had contracted for himself and for and in behalf of Lon V. Smith, M. J. Davis, Oscar Rudnick, Morris Laba, George L. Bradford, Morris Himovitz, Max Himovitz and Fred E. Borton to purchase certain specifically described real property. It further provided that each of the above named persons assumed and agreed to pay an equal one-ninth portion of the remaining balance owing on the purchase price of said lands in addition to the amounts theretofore paid by them.

(2) Said instrument further recited that all real property and any interest therein acquired under or by virtue of the contracts between L. G. Helm and Miller and Lux, Inc., was held and would thereafter be held in trust for the benefit of the parties heretofore named in paragraph (1) supra, for the purpose of managing, leasing, selling and otherwise liquidating "said real property".

(3) Said instrument also provided that the trustee was obliged to pay all principal and interest

on the contracts of purchase heretofore mentioned and on any and all encumbrances thereafter placed upon the property acquired pursuant to said contracts, and that in addition to the foregoing he should pay all taxes and assessments. For his services in connection with the duties to be performed by him, the trustee was authorized to retain \$1.00 per annum.

(4) Said trust instrument gave the trustee certain [5] remedies to enforce the collection of obligations assumed by the beneficiaries. It also provided for a certain procedure to be followed in making a collection against a delinquent beneficiary and it authorized the trustee to sell the equity of any delinquent beneficiary for the purpose of applying the proceeds therefrom in payment pro tanto on the obligation owed by said beneficiary.

(5) It was further provided in said instrument that a committee of four named individuals together with the trustee, L. G. Helm, would comprise a managing committee. Said committee was entrusted with the obligation of managing and controlling the trust property.

(6) Said instrument provided that the trustee and the committee members would serve during their lifetimes or until removed by a final order of the court. It also provided that the duration of the trust should be twenty-five years. However, there was a further limitation providing that the holders of two-thirds of the total beneficial interest in the trust could terminate the trust at will by indicating

their consent in writing. Upon such termination the trust instrument provided that the property constituting the corpus of the trust should be conveyed by the trustee to the beneficiaries prorata. In the event that said property was subject to a lease at the time of said distribution, the trust instrument provided that from the date of the termination of said trust the beneficiaries thereof would participate prorata in all future royalties, issues and profits. And lastly, it provided that if the beneficiaries were unable to decide among themselves on an equitable partition of said property, the committee should, in that event, divide said property in equal units for distribution. It was provided that the committee's determination in this regard would be binding on all the parties. [6]

(7) Said trust instrument was executed solely for the purpose of conveying equal, undivided, one-ninth interests to the nine beneficiaries thereof and for the purpose of protecting the title of said property against the infirmities of death, insolvency and incapacity of said co-owners. Said instruments made no provision for the issuance or transfer of certificates of interest nor did it limit or attempt to limit the liability of the beneficiaries. And, no business was conducted by the trustee or any of the beneficiaries under or pursuant to the provision of said instrument during the calendar year 1938.

(8) On or about May 27, 1938, the beneficiaries and the trustee named in the instrument aforesaid mutually agreed to rescind the trust instrument

dated June 29, 1937, whereupon another instrument was drafted and executed under date of May 27, 1938. Therein the beneficiaries and the trustee expressly stated that the instrument of June 29, 1937 had been revoked, rescinded and canceled. Said instrument of revocation also remised, released and forever quit-claimed unto said L. G. Helm all of the rights of the beneficiaries under said declaration of trust and all of the said beneficiaries' interests in and to the lands and premises described in said trust instrument of June 29, 1937. Thereafter said instrument of revocation was duly recorded.

(9) Subsequently, and during the month of May, in the year 1938, L. G. Helm, in his individual capacity, leased the lands and premises purchased from Miller and Lux, Inc. to Pacific Western Oil Company, Standard Oil Company, Union Oil Company, Barnsdall Oil Company and Signal Oil Company, and in consideration therefore he was paid bonuses amounting to \$44,441.25 during the month of May 1938. On or about May 24, 1938, Mr. Helm received \$7,800.00 from Mr. C. E. Houchin in consideration for the [7] sale and conveyance of 240 acres of the property acquired from Miller and Lux, Inc. on January 8, 1937 at a cost of \$15.00 per acre.

(10) After the foregoing transactions had been executed and on or about July 15, 1938, Mr. Helm and the parties who had been beneficiaries under the instrument dated June 29, 1937, executed an instrument entitled "Declaration of Trust." Said

declaration of trust was dated July 15, 1938, and was similar in all respects to the trust instrument dated June 29, 1937, except for the fact that it recited the execution, recordation and revocation of the first of said trust instruments and not only described the trust property according to its legal description but also according to the description of the oil and gas leases which had been executed subsequent to the cancellation of the first trust instrument. The purpose of the parties in executing said trust instrument of July 15, 1938, was the same as the purpose which the parties had when they executed the trust instrument dated June 29, 1937. Said instrument continued in full force and effect throughout the remainder of the calendar year 1938.

(11) The activities of Mr. Helm under the two trust instruments operative during the calendar year 1938 were confined to collecting the rents, issues and profits derived from the trust property, and to distributing same to the beneficiaries named in said trust instruments. Neither he nor the beneficiaries named in the aforesaid trust instruments were engaged in doing business with the trust property during the calendar year 1938 and whatever classification may attach to the so-called, "Helm and Smith Syndicate", none of the participants, individually or collectively, were, with respect to the trust property, engaged in a real estate brokerage business. [8]

(12) No oil wells were drilled on the property

which was conveyed into trust nor were any wells commenced by any of the lessees for exploration or discovery of oil on said land during the calendar year 1938. At no time during the calendar year 1938 were any refining, processing or selling operations incident to the production and sale of oil and gasoline carried on by Mr. Helm or any of the beneficiaries under the two several trust instruments.

(13) For the calendar year 1938 Mr. Helm caused to be filed an income tax return with the Department of Internal Revenue on a partnership form. Said return was filed on the basis of cash receipts and disbursements to conform with the method employed by Mr. Helm in keeping accounts. Said return reported a net taxable income of \$29,-112.23 which was distributed to the respective partners during the calendar year 1938.

(14) Said return also reported the gain realized on the sale of 240 acres to Mr. C. E. Houchin as a capital gain. The Commissioner has erroneously and illegally determined that said gain was ordinary income taxable in full.

(15) On or about October 26, 1940, Mr. L. G. Helm died in the City of Los Angeles. Thereafter and on November 23, 1940, at a meeting of the committee established under the trust instrument dated July 15, 1938, Mr. M. J. Davis was appointed temporary trustee to succeed Mr. Helm deceased.

(16) During the month of April, 1941, a capital stock return for the year ending June 30, 1938 was

filed for and in behalf of the alleged Helm and Smith Syndicate. Said capital stock tax return declared a value of \$300,000.00 for its capital employed in the transactions hereinbefore enumerated and showed a tax of \$300.00 plus interest from August 1, 1938 of [9] \$48.17, which was duly paid to the Collector of Internal Revenue of the Sixth Collection District of California.

Wherefore the petitioner prays that the Board may hear the proceeding and expunge the deficiency proposed by the Commissioner.

THOMAS R. DEMPSEY

WILLIAM P. THAYER

H. BENJAMIN THOMPSON

WILLIAM L. KUMLER

Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California.

(Duly Verified). [10]

EXHIBIT "A"

SN-IT-3

TREASURY DEPARTMENT

Internal Revenue Service

12th Floor,

U. S. Post Office and Court House,

Los Angeles, California

Feb. 6, 1941

Los Angeles Division

LA:IT:90D:EIS

Helm and Smith Syndicate,

c/o L. G. Helm,

1413 Seventeenth Street,

Bakersfield, California.

Sirs:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1938 discloses a deficiency of \$5,223.57 and that the determination of your excess-profits tax liability for the year mentioned discloses a deficiency of \$3,661.47 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) GEORGE D. MARTIN

Internal Revenue Agent
in Charge.

Enclosures:

Statement.

Form of waiver.

EIS:fpc [11]

STATEMENT

LA:IT:90D:EIS

Helm and Smith Syndicate,
c/o L. G Helm,
1413 Seventeenth Street,
Bakersfield, California.

TAX LIABILITY FOR THE TAXABLE YEAR ENDED DECEMBER 31, 1938

	Liability	Assessed	Deficiency
Income tax	\$5,223.57	None	\$5,223.57
Excess-profits tax	3,661.47	None	3,661.47
	_____	__	_____
Totals	\$8,885.04	None	\$8,885.04

In making this determination of your income and excess-profits tax liability, careful consideration has been given to the report of examination dated March 22 1940; to your protests dated July 15, 1940 and August 6, 1940; and to the statements made at the conferences held on July 30, 1940, and November 7, 1940.

It is held that your organization is comprehended in the term "corporation" as such term is defined in section 901 of the Revenue Act of 1938. Your tax liability for the taxable year 1938 has been computed accordingly.

A copy of this letter and statement has been mailed to your representative, Mr. H. B. Thompson, 1104 Pacific Mutual Building, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

[12]

Helm and Smith Syndicate.

Statement.

ADJUSTMENT TO NET INCOME

Net income as disclosed by return (Form 1065).....	\$29,112.23
Additional income:	
(a) Gain on sale of assets.....	1,400.00
	<hr/>
Net income adjusted.....	\$30,512.23

EXPLANATION OF ADJUSTMENT

(a) You filed a partnership return of income, and included a long-term capital gain of \$2,800.00 on the sale of real estate, which constitutes your stock in trade, such amount representing $66\frac{2}{3}\%$ of the gain of \$4,200.00 realized from such sale. Section 117 of the Revenue Act of 1938 specifically excludes stock in trade or property held primarily for sale to customers; also, the percentage to be taken into account on the sale of capital assets does not apply to corporations.

COMPUTATION OF TAX

Excess-profits Tax:	
Taxable net income.....	\$30,512.23
No capital stock tax return has been filed, or value declared of capital stock.	
Net income subject to excess-profits tax.....	\$30,512.23

Excess-profits tax:	
12% of \$30,512.23.....	\$ 3,661.47
Excess-profits tax assessed.....	None

Deficiency of excess-profits tax.....	\$ 3,661.47
	[13]

Helm and Smith Syndicate. Statement.

Income Tax:	
Taxable net income.....	\$30,512.23
Less: Excess-profits tax paid.....	None

Adjusted net income.....	\$30,512.23
Tax at 19% of \$30,512.23.....	\$5,797.32
Less: 2½% per cent of dividends paid	
credit	573.75

Total income tax.....	\$ 5,223.57
Income tax assessed.....	None

Deficiency of income tax.....	\$ 5,223.57

[Endorsed]: U.S.B.T.A. Filed May 2, 1941. [14]

[Title of Board and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition of the above-named taxpayers, admits and denies as follows:

1. Admits that the petitioner is an unincorporated group, with principal office at 1704 Chester Avenue, Bakersfield, California, c/o M. J. Davis,

and denies the rest of said paragraph 1 of the petition.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the petition.

4. (a) to (d), inclusive. Denies all the allegations of error contained in subdivisions (a) to (d), inclusive, of paragraph 4 of the petition.

5. (a), (b)—(1) to (16), inclusive. Denies the allegations contained in subparagraph (a), and subdivisions (1) to (16), inclusive, of subparagraph (b), of paragraph 5 of the petition. [15]

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

(Signed) J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel.

FRANK T. HORNER,

E. A. TONJES,

Special Attorneys, Bureau of

Internal Revenue.

Received June 28, 1941. U. S. Board of Tax Appeals.

[Endorsed]: U.S.B.T.A. Filed June 28, 1941.

[16]

[Title of Board and Cause.]

William L. Kumler, Esq., for the petitioner.

E. A. Tonjes, Esq., for the respondent.

MEMORANDUM OPINION

Sternhagen: 1. The Commissioner determined a deficiency for 1938 of \$5,223.57 income tax and \$3,661.47 excess-profits tax. The petitioner, having filed a partnership return in Los Angeles, assails the determination (1) that it is "comprehended in the term 'corporation' as such term is defined in section 901 of the Revenue Act of 1938;" (2) that the gain in the sale of a piece of land was an ordinary gain; and (3) of the valuation of capital stock used in the computation of excess-profits tax.

All the facts are stipulated. The petitioner is a group of individuals who contributed equally in the purchase of a tract of about 2500 acres in the San Joaquin Valley, believing that it might contain oil. One of their number, Helm, contracted to buy the property and was given wide power and authority to handle it to their common advantage. He rented it for sheep grazing. In 1937 a writing was drawn and signed by all the participating owners in the form of a twenty-five year trust instrument, designating Helm as trustee and all the participants as beneficiaries. Helm was given power to manage and control the property, "sell, convey, lease, including oil and gas leases," pay the purchase price, taxes, and expenses, collect proportionately from the participants, and distribute income and profits. Upon

default of any participant, his interest could be sold, and the assignee would assume the obligations. In case of vacancy in the trusteeship, the participants could elect a successor. Helm made an agricultural lease of part of the property. In May 1938, he made six oil leases, each for cash and royalties. For convenience in title insurance the trust instrument was revoked in May 1938, and the participants recorded a release and quitclaim to Helm of their rights in the land. 412 acres were sold in July. The amounts received by Helm from the grantee and from the several oil lessees were deposited with the escrow agent for the original grantor, and the deed for the 2,500 acres was received by Helm and title was held in his name. A second trust instrument was executed in July 1938, substantially restating the terms of the earlier instrument which had been revoked. One of the participants sold one-fourth of his interest to each of two new persons and their proportionate interests were then recognized. In the taxable year Helm distributed the net gains and income among the participants proportionately. No explorations have been made or wells drilled upon the property.

Although, like *Thrash Lease Trust v. Commissioner*, 99 Fed. (2d) 925, certiorari denied 306 U. S. 654, this is a border line case, the organization is more like the taxpayer in that case than the syndicate in *Commissioner v. [17] Gerstle*, 95 Fed. (2d) 587, or in *Commissioner v. Rector & Davidson*, 111 Fed. (2d) 332, certiorari denied 311 U. S. 672, upon

which petitioner principally relies. A connotative definition of the statutory term "association" has never been available and, since *Morrissey v. Commissioner*, 96 U. S. 344, it has been recognized that the outline is not clear. The petitioner is a group collectively engaged in a business enterprise conducted by a central management and control. Title to the property is in one name. Participating interests are divisible and assignable. The enterprise is not like a joint venture for the single purchase and sale of a piece of real estate but is a long time business, expected to yield regular income from oil leases and requiring payment of and participation in expenses of operation.

The Commissioner's determination that petitioner is an association taxable as a corporation is sustained.

2. It is unnecessary to consider whether the gain from the sale of 412 acres in July was an ordinary capital gain, since section 117 (b) is not applicable to corporations.

3. The Commissioner refused to recognize the capital stock value declared by the petitioner in an untimely capital stock tax return filed April 26, 1941. Respondent, in his brief, makes no point of the tardiness of the filing, and at the hearing suggested no distinction from *Del Mar Addition v. Commissioner*, 113 Fed (2d) 410. We see no distinction, and upon the authority of that decision and *Huron River Syndicate*, 44 B. T. A. 859, we

hold that the value declared in the late return is properly to be used.

Decision will be entered until Rule 50.

Entered: June 26, 1942.

[Board of Tax Appeals Seal] [18]

United States Board of Tax Appeals
Washington

Docket No. 107125

HELM AND SMITH SYNDICATE,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Subsequent to the Board's Memorandum Opinion, entered June 26, 1942, the respondent filed a computation which came on for hearing on September 9, 1942. No objection to the said computation having been filed, it is

Ordered and Decided that for 1938 there are deficiencies of \$5,223.57 in income tax and \$30.73 in excess-profits tax.

Entered Sep. 10, 1942.

(Signed) J. M. STERNHAGEN

[Seal] Member [19]

[Title of Board and Cause.]

STIPULATION OF FACTS

It Is Stipulated and Agreed by and between the parties to the above entitled proceeding through their respective counsel that the following facts may be received by the Board with the same force and effect as though they had been submitted and received in open hearing.

I.

During the taxable year ending December 31, 1938, "Helm and Smith Syndicate," under which name this proceeding is brought, was an unincorporated group of individuals, to wit: L. G. Helm, Lon V. Smith, Oscar Rudnick, George L. Bradford, Fred E. Borton, Marvin J. Davis, Morris Laba, Morris Himovitz and Max Himovitz, all residents of Bakersfield, California.

II.

Respondent having examined the manner in which said individuals held their interests in certain real property and the manner in which they transacted business with respect thereto during the calendar year 1938 has determined that said group of individuals was an association taxable at corporate rates within the purview of Section 901 of the Revenue Act of 1938. [20]

III.

Sometime in 1936, L. G. Helm obtained information that 2427.26 acres of land located in the San

Joaquin Valley of California could be purchased for \$15.00 per acre. Believing that the property had possibilities for producing oil, Helm made a deposit with the owner, Miller and Lux, Inc., and obtained the right to acquire the property at the agreed price of \$15.00 per acre.

IV.

Thereafter, and during January, 1937, Helm contacted the eight persons in addition to himself specifically named in paragraph I' hereof, and obtained from each the sum of approximately \$1,000.00 with the understanding that said sums together with an equal amount to be furnished by Helm was to be used to acquire the above described property at \$15.00 per acre.

V.

Mr. Helm thereupon requested Miller and Lux, Inc. to prepare its usual form of conditional sales contract covering the sale of the 2427.26 acres of land in accordance with its usual terms of 25% of the purchase price down and 10% of the balance of the purchase price to be paid annually with interest at 6% per annum. Mr. Helm's request was accompanied by the required down payment of 25% of the purchase price made with monies contributed by Mr. Helm, and the other eight individuals named above and conditional sales contracts with Miller and Lux, Inc. were thereafter prepared and executed by and between Miller and Lux, Inc. and

L. G. Helm as requested. These contracts are attached hereto and designated Exhibits 1 and 2. In purchasing the property from Miller and Lux, Inc. Mr. Helm did not disclose to the seller the fact that the eight other named individuals had purchased interests in the property, but took title in his name only. [21]

VI.

Mr. Helm issued no receipts for the money furnished by the eight other co-purchasers of the land, nor was any formal or written agreement prepared or executed specifying the interests of the nine above-named persons in the venture. It was understood, however, between all of the nine co-purchasers of the land that each party was acquiring an undivided one-ninth interest in the property and that Mr. Helm would handle the property as he might see fit to the common advantage and profit of all.

VII.

Thereafter and during the year 1937 Mr. Helm following the general practice of Miller and Lux, the preceding owner and of other land owners in the area, executed leases of the property for sheep raising in his own name receiving a rental of 25c per acre which he accounted for to the other owners in accordance with their respective interests.

VIII.

Because there was no instrument in writing defining the interests owned by the eight undisclosed co-purchasers, George L. Bradford and Marvin J.

Davis, officers of the Bakersfield Abstract Company, two of said eight undisclosed co-purchasers, felt that some documentary evidence should be prepared and should be in the possession of each of the interest holders to evidence their interest in the venture. George L. Bradford thereupon prepared a declaration of trust, forwarding the same to Fred E. Borton, an attorney and one of the eight undisclosed co-purchasers, for approval. This trust agreement was duly entered into by all of the nine named co-purchasers under date of June 29, 1937. The said trust agreement is attached hereto and designated Exhibit 3. [22]

IX.

Thereafter Lewis Brothers, agriculturalists, called at the office of Mr. Helm and stated that due to the surplus water being wasted from the Buena Vista Lake there would be an opportunity to dry farm certain portions of the said land. Lewis Brothers offered to lease portions of said land for agricultural purposes, to plant crops, and to harvest the same paying to the landowner a one-fifth crop share without expense to the landowner. Mr. Helm thereafter, in his own name, leased the land to Lewis Brothers for such purposes, later accounting to the other eight interest holders for the proceeds from the one-fifth crop share of the landowner.

X.

On or about January 6, 1938, Mr. Helm called upon the other eight interest holders to contribute

their prorata shares of the principal and interest installment due upon the conditional sales contracts with Miller and Lux, Inc. upon January 8th of each year, which they did.

XI.

In the early part of 1938 several new oil fields were discovered in Kern County and Mr. Helm entered into negotiations with various oil companies for the purpose of leasing certain portions of the aforesaid property to said oil companies for the production of oil and gas from the property, if it should be found to exist thereon. As a result of these negotiations, Mr. Helm succeeded in consummating the following agreements with the following oil companies:

(a) On or about May 18, 1938, an indenture was executed by and between L. G. Helm and Etta Helm, his wife, as "grantor" and the Standard Oil Company of California as "grantee", which indenture is attached hereto and designated Exhibit 4.

[23]

(b) On or about the 19th day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Barnsdall Oil Company certain described land, under a leasing agreement which is attached hereto and designated as Exhibit 5.

(c) On or about the 20th day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Pacific Western Oil Corporation certain described land, under a leasing agreement which is attached hereto and is designated as Exhibit 6.

(d) On or about the 21st day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Signal Oil and Gas Company certain described land under a leasing agreement which is attached hereto and designated Exhibit 7.

(e) On or about the 24th day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Union Oil Company two separate parcels of land under two leasing agreements which are attached hereto and designated Exhibits 8 and 9.

XII.

The grants and the leases of the land described as Exhibits 4 to 9, inclusive, as aforesaid, were actually executed by and between L. G. Helm and his wife individually as lessors and grantors and the said oil companies as lessees and grantees and deposited in escrow with the Bakersfield Abstract Company. It was then found that the trust declaration hereinabove described as Exhibit 3 had been filed for record and that L. G. Helm held the title to the property as a trustee for himself and the eight other beneficiaries named in that trust declaration. For the purpose of consummating the leasing agreements and of allowing the title insurance policies to be issued without Mr. Helm's being required to perform the usual formalities required of a trustee, the trust declaration was revoked under date of [24] May 24, 1938, by an instrument of revocation which is attached hereto and designated Exhibit 10. Under the terms of

said instrument of revocation all the members of the syndicate, released and quit-claimed to L. G. Helm all their rights and interests in and to the property under the declaration of trust of June 29, 1937, described as Exhibit 3 herein.

XIII.

At about the same time Mr. Helm was negotiating the aforesaid leases with the various oil companies and due to the fact that said oil companies were leasing portions of the land, one C. E. Houchin, expressed a desire to purchase and did purchase some 412.53 acres of the land. This sale was consummated by two grant deeds whereby L. G. Helm and Etta Helm, his wife, granted to C. E. Houchin certain described land then owned by the syndicate. Only that portion of the land sold to C. E. Houchin which had been held by the syndicate for over eighteen months is in controversy in the present proceeding. Said portion of land, comprising some 240 acres and having a cost basis of \$3600.00, was sold by Mr. Helm to Mr. Houchin for \$7800.00 by deed dated July 1, 1938, which deed is attached hereto and designated Exhibit 11.

XIV.

The consideration paid by the grantees and lessees of the land as set forth above was deposited in escrow by Mr. Helm under instructions to the escrow agent to procure from Miller and Lux, Inc., a deed conveying to him all of the 2427.26 acres of land sold to him by Miller and Lux, Inc., under the

conditional sales contracts (Exhibits 1 and 2) and to pay from the monies so deposited in escrow, all sums due Miller and Lux, Inc. under the conditional sales contracts. The escrow agent performed all these steps. [25]

XV.

Thereafter and under date of July 15, 1938, a second trust declaration, attached hereto and designated Exhibit 12, was executed by all the beneficiaries in order to establish as of record their interests in and to the land then held in the name of Mr. Helm, subject to the leases which he had executed with the various oil companies.

XVI.

Mr. Helm thereupon distributed to each of the interest holders his prorata share of the excess monies coming into his hands over and above the amount which he had used to defray incidental expenses and to pay off the balance of the purchase price of the land originally purchased from Miller and Lux, Inc. under the conditional sales contracts (Exhibits 1 and 2).

XVII.

Due to the fact that Mr. Helm and Mr. Smith had devoted considerable time and effort to negotiating and consummating these transactions the beneficiaries allowed each of them a \$500.00 commission for their services, payable out of the funds held by Mr. Helm.

XVIII.

All of the aforesaid oil leases executed by Mr. Helm on behalf of the nine beneficiaries were long term leases providing for the payment to the landowner of a one-eighth royalty in the event of the discovery of oil and gas in commercial quantities. No exploratory wells have ever been drilled either on the property leased as aforesaid or upon adjacent lands and no royalties or rentals have ever been paid under the provisions of any of said oil and gas leases nor has any attempt been made to explore for oil or develop the land for oil or gas production. The only proceeds received [26] by Mr. Helm, or by any other co-owner from said leases were the original bonuses paid by each of said oil companies in 1938. Since the second declaration of trust (Exhibit 12) the trustee of the property has had no duties other than collecting the annual sheep feed rentals and crop shares and paying the current taxes. Except for the commissions allowed Messrs. L. G. Helm and Lon V. Smith, administrative expenses of the syndicate for the calendar year 1938 were:

Recording fees and stenographer	\$ 50.62
Office rent charges made by L. G. Helm for use of his office	25.00
Grain insurance	8.48
Escrow fees	10.30
Commission to J. Lee Cross	200.00
	<hr/>
	\$294.40

XIX.

Although the trust declarations each provided for a committee of the beneficiaries which was to meet and consult with the trustee, during the year 1938, Mr. Helm handled all matters pertaining to this property according to his best judgment, at times discussing actions he had taken with such members as he might come in contact. Many of the transactions handled by Mr. Helm were performed without first having obtained any definite approval from the beneficiaries, which procedure was in harmony with the original understanding of all parties that Mr. Helm was to do anything necessary and to take care of any matters that might arise relative to the property.

XX.

No office was maintained for the purpose of conducting any business relating to the property and all matters in connection therewith were handled by Mr. Helm in his personal office in the El Cajon Building, Bakersfield, California, or at such other places as suited Mr. Helm's convenience. The [27] only records kept for the syndicate were entries in Mr. Helm's cash book which contained entries relating to interests other than those of these co-owners and from which the accountings to the other eight beneficiaries and the federal partnership information return (form 1065) for the year 1938 were made, a copy of which is attached and marked Exhibit 13. Such records as were maintained were sufficient to enable Mr. Helm to ascertain how much

of the receipts from the property were to be distributed to the several beneficiaries in accordance with their respective interests.

XXI.

On or about April 26, 1941, a capital stock tax return was filed with the Collector of Internal Revenue for the Sixth California Collection District at Los Angeles, California, under the name of Helm and Smith Syndicate for the year ended June 30, 1938, a copy of which is attached hereto and designated Exhibit 14. Capital stock taxes in the amount of \$300.00 plus interest thereon in the amount of \$48.17 were paid on April 28, 1941, and, a penalty in the amount of \$75.00 and interest thereon of \$1.11 were paid on June 10, 1941.

WILLIAM G. KUMLER

Counsel for Petitioner,

1104 Pacific Mutual Building,
Los Angeles, California

(Signed) J. P. WENCHEL

Counsel for Respondent

[Endorsed]: U.S.B.T.A. Filed Feb. 4, 1942. [28]

EXHIBIT No. 1

(Copy)

No. C-149

Agreement

Noted on Plat

MILLER & LUX

Incorporated

A Corporation

With

L. G. Helm

Bakersfield, California

CONTRACT FOR SALE OF LAND

Dated: January 8, 1937

This Agreement, made this 8th day of January, 1937, between Miller & Lux Incorporated (a corporation), hereinafter called the seller, and L. G. Helm of El Tejon Hotel Bldg., Bakersfield, California, hereinafter called the purchaser.

Witnesseth:

1. In consideration of the covenants and agreements herein contained and the payments to be made, as herein specified, the seller agrees to sell and the purchaser agrees to buy all the following described real property situate in the County of Kings, State of California, to-wit:

Township 24 South, Range 21 East, M. D. B. & M.:

East half of southeast quarter of Section 25;

Southeast quarter of Section 36;

Total acreage—240.00 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the east and south lines of Section 25 and Section 36 and within above-described tracts of land for use as public roads.

Township 24 South, Range 22 East, M. D. B. & M.:

North half, and the east half of southwest quarter of Section 30, containing 434.68 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the north, east, west and south lines of said Section 30, and within above-described tract of land for use as public roads.

2. Said purchaser promises and agrees to pay for said land the sum of Ten thousand one hundred twenty and 20/100 Dollars (\$10,120.20), in lawful money of the United States, as follows, to-wit: Two thousand five hundred thirty and 20/100 Dollars (\$2,530.20), upon the execution of this agreement, and the balance in ten (10) equal installments of Seven hundred fifty-nine Dollars (\$759.00) each, payable on the 8th day of January of each year beginning January 8th, 1938, and until said purchase price is fully paid. [29] Deferred payments shall bear interest payable semi-annually at six per cent per annum from the date hereof until the said deferred payments are made. All payments shall be made to the seller at its office in the City and County of San Francisco, State of California, and not elsewhere, nor to any other person, nor to any selling agent of said seller. The purchaser may, if

he so desire, pay all or any of said installments prior to the time fixed in this contract and interest thereon shall cease from the time of such payment.

3. The following property and property rights are excepted and reserved, to-wit:

(a) Rights of way for all presently existing roads, telephone, telegraph and electric power and pipe lines, sewers, drainage ditches, canals and other reclamation and irrigation works, and the easement to maintain, operate and repair the same;

(b) The easement to enter and construct, maintain, operate and repair additional roads, ditches, canals, laterals and other irrigation works and drainage ditches over and across any of said land along lines of location substantially coincident with the boundaries of said land. The seller agrees to pay said purchaser for the land so taken by it hereafter for such purposes at the time of such taking a sum equal to the amount paid by the purchaser to the seller for the land so taken.

(c) The right of ingress to and egress from the land herein described for said purposes, and the right to take and use with the minimum of damage to the said land such earth and materials as may be actually necessary to construct, maintain and repair that portion of said works, if any, situate on said premises.

4. The above described land is sold subject to any lease or farming contract now existing in respect to the same.

5. Upon the execution of this agreement and the

making of the initial payment the purchaser shall have the right to take possession of said land and thereafter continue in possession so long as he shall not be in default hereunder.

6. The seller shall pay the taxes on said property for the portion of the fiscal year up to the date of this agreement, and the purchaser shall pay the taxes for the balance of this fiscal year. All taxes and all assessments hereafter levied or becoming due upon said land by any irrigation, reclamation, drainage, water storage, or any other district or public corporation, shall be paid by the purchaser. The seller may pay the said taxes or assessments and the insurance, if hereinafter provided for, on behalf of the purchaser, and the same shall become immediately due from the purchaser to the seller, together with interest at the rate of six (6) per cent per annum from the date of payment by the seller until repaid, and said seller shall have a lien upon any interest of said purchaser in said land for the money paid by it for said insurance, taxes or assessments, together with said interest thereon.

7. Time is of the essence of this agreement and of each and every of the terms, provisions, conditions and stipulations hereof, and the waiver by the seller of any breach of this agreement shall not be held or deemed to be a waiver of the terms of this contract requiring performance of other covenants or terms, nor of the provisions hereof making time of the essence hereof as to other payments thereafter falling due.

8. After full and specific performance by the purchaser of all of his obligations hereunder, the seller shall on written demand cause to be executed and delivered to the purchaser a good and sufficient deed conveying to him the above described premises and appurtenances free and clear of all encumbrances done or suffered by the seller, excepting all taxes, assessments, charges and interest herein required to be paid by the purchaser, said deed shall be in the usual form of deeds of grants and shall contain and provide for all reservations, exceptions, restrictions, conditions and limitations herein mentioned.

9. It is expressly understood that if the purchaser shall not keep or perform all the covenants or conditions herein contained on his part to be kept or performed, or shall fail for a period of thirty (30) days after any sum herein required to be paid by him becomes due and payable to pay the same, that the seller, at its option, shall be released from all obligations at law or in equity, to convey the said land, and all rights and interests of the purchaser under the agreement shall cease and terminate, and the seller shall have the right to immediate possession of the said land, and all improvements thereon, and the purchaser shall forthwith redeliver possession of the said land to the seller, and all moneys theretofore paid by the purchaser under the agreement, together with all improvements placed on the land, shall be retained by the seller as liquidated and agreed damages for

such default, or on said default, the seller, at its option, may declare by notice to the purchaser the entire unpaid balance of the said purchase price to be due and payable, and may proceed, by appropriate action at law or suit in equity, to enforce payment hereof, in which action or suit, seller shall be entitled to recover reasonable attorney fees.

In the event the purchaser shall be in default hereunder, no offer of performance nor tender of deed need be made by the seller, and no notice to quit need be served, said offer, tender and notice being expressly waived by the purchaser.

10. ~~It is further understood that all water rights, whether riparian, appropriative or prescriptive and including the right to receive water pursuant to the terms of the Miller-Haggin Agreement of July 28, 1888, are expressly excepted and reserved from this sale. The purchaser waives any right to object to and hereby consents to the storage and or impounding of the waters of Kern River and its tributaries, without limit, by the Buena Vista Water Storage District, and or the seller and its assigns, and the purchaser also consents to said District and or the seller and its assigns diverting the waters of said river to riparian and non-riparian lands within or without the watershed of said river. Said right of storage and said right to divert the waters of said river shall be considered as an easement in and shall bind said land, regardless of ownership thereof.~~

11. No alteration of the terms of this contract shall be valid or binding upon the seller without the written consent of its President or Vice-President.

12. It is understood by the purchaser that all of the above described land is subject to a deed of trust to Bank of California, National Association, as trustee, and it is understood and agreed that the seller is to secure and deliver to the purchaser a full and sufficient deed of reconveyance from the said trustee upon completion of all the payments herein provided for.

13. It is expressly understood and agreed that the above described land is purchased by the purchaser without any representations by the seller or its agent as to the character, fertility or productiveness of the said land, and without any other representations or guaranties of any kind, and that this agreement contains all of the agreements of the parties hereto.

14. In case the said land is part of a larger tract of land belonging to the seller, and the sale thereof shall separate the balance of the land owned by the seller from any stream or watercourse, such separation shall in no way affect the riparian rights of the land so retained by the seller, but such riparian rights shall be preserved and be unaffected by such sale.

15. Any loss by fire or otherwise shall not affect the obligation of the seller to convey nor of the purchaser to take said property according to the terms of this agreement.

16. The purchaser hereby further agrees not to remove, or permit to be removed from the said land, any improvements, whether placed thereon by the

purchaser or by others, and agrees to keep and maintain said improvements in good condition and repair, and to use all reasonable efforts to keep the said land free from squirrels and noxious weeds and grasses, and to cultivate and properly care for the said land in a good and farmer-like manner. [30]

17. Seller may continue, renew or place new insurance on any improvements on the above described land. Prepaid premiums shall be pro-rated as of the date of this agreement, and all premiums on said insurance hereafter becoming due shall be paid by the purchaser. In the event of loss, any insurance recovered shall, at the option of the purchaser, be applied toward the repair or replacement of insured premises, and if not so used, then the same shall be applied toward the payment of any balance due under this agreement, and the surplus, if any, shall be paid to the purchaser.

17a. It is further understood that this sale is made subject to a Grazing Lease, No. 1730, entered into by Seller with C. E. Houchin of Bakersfield, California, dated January 1, 1937, and that Purchaser is not to have possession of the above-described property until the expiration of said Grazing Lease on December 31, 1937. The Purchaser shall be entitled to a pro-rata of the rental of the property in this sale for the period from January 8 to December 31, 1937.

18. Neither this contract nor any interest therein shall be assignable without the written consent of the seller.

19. It is understood and agreed that the stipulations of this agreement are to apply to and bind the heirs, executors and administrators, successors and assigns of the respective parties hereto, except as otherwise herein provided.

20. The word "purchaser," whenever used in this instrument, shall be construed to include the plural as well as the singular number and that the use of the masculine gender in this instrument shall be construed to include the feminine and neuter genders.

In Witness Whereof, the parties hereto have executed this agreement in triplicate the day and year first above written.

[Seal]

MILLER & LUX INCOR-
PORATED

By (Illegible)

Vice President

By W. S. MITCHELL

Assistant Secretary

L. G. HELM

Purchaser

.....

Purchaser

Approved: W. S. M.

Form Approved:, Attorney.

Description Approved: I.C.C., Engineer.

Compared.....to.....

Full name of wife of purchaser: Etta Helm.

Address of Purchaser: 1413-17th Bakersfield.

Calif. (Must be inserted.) [31]

Assignment

For value received, the above named purchaser hereby assigns and grants unto.....
of....., California,
 all of his right, title, interest, claim and demand in and to the foregoing agreement, including the right to demand and receive the deed therein mentioned. This assignment is subject to the approval of Miller & Lux Incorporated.

.....
 Purchaser.

.....
 Purchaser.

I hereby accept the assignment of the foregoing agreement and assume and promise to keep and perform all of the covenants and agreements thereof as therein required.

.....
 Assignee.

The foregoing assignment and acceptance is hereby approved.

Dated thisday of....., 19....

MILLER & LUX, INCORPORATED,

By

I consent to the above assignment.

.....
 Wife of Purchaser.

PAYMENTS—(Ruled form not filled it.) [32]

EXHIBIT No. 2

(Copy)

No. C-148

Agreement
Noted on Plat

Miller & Lux
Incorporated

A Corporation

With

L. G. Helm

Bakersfield, California

CONTRACT FOR SALE OF LAND

Dated: January 8, 1937.

This Agreement, made this 8th day of January, 1937, between Miller & Lux Incorporated (a corporation), hereinafter called the seller, and L. G. Helm of El Tejon Hotel Bldg., Bakersfield, California, hereinafter called the purchaser.

Witnesseth:

1. In consideration of the covenants and agreements herein contained and the payments to be made, as herein specified, the seller agrees to sell and the purchaser agrees to buy all the following described real property situate in the Counties of Kern & Kings, State of California, to wit:

Township 24 South, Range 22 East, M. D. B. & M.:

South half of north half of Section 29;

Southwest quarter, south half of northwest quar-

ter and west half of northeast quarter of Section 32;

West half of Section 33;

West half of Section 34;

Total acreage—1,120 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the east and west lines of Section 29, along the north, west and south lines of Section 32, along the north, west, and south lines of Sections 33 and 34, and within above-described tracts of land for use as public roads.

Township 25 South, Range 21 East, M. D. B. & M.:

A portion of the north half of Section 1, Township 25 South, Range 21 East M. D. B. & M., being more particularly described as follows: Beginning at a point on the east line of Section 1, Township 25 South, Range 21 East, M. D. B. & M., which bears South $0^{\circ} 09'$ West 1322.65 feet from the northeast corner of said Section 1, thence along east line of Section 1, South $0^{\circ} 09'$ West 1322.65 feet to the east quarter section corner of Section 1, thence along the east and west quarter section line of Section 1, North $89^{\circ} 58'$ west 3052.10 feet, thence along the east line of a one hundred and forty acre tract of land conveyed by Miller & Lux Incorporated to G. Henshaw by deed dated February 24, 1936, North $0^{\circ} 20\frac{3}{4}'$ East 1322.55 feet, thence South $89^{\circ} 58'$ East 3048.05 feet to the point of beginning, containing 92.53 acres, more or less. Reserving a road easement over and upon a strip of land thirty feet in width along the east line of said Section 1 and within

above-described tract of land for use as a public road.

East half of southwest quarter, and the southwest quarter of southwest quarter of Section 1, containing 122.28 acres, more or less. Reserving road easements over and upon a strip of land thirty feet in width along the west and south lines of said Section 1 and within above-described tracts of land for use as public roads.

Township 25 South, Range 22 East, M. D. B. & M.:

North half of northwest quarter of Section 3;

Northeast quarter and north half of southeast quarter of Section 4;

All of the north half of north half, except the northeast quarter of northeast quarter, and the east 29.69 acres of the northwest quarter of the northeast quarter; Section 6;

Total acreage—417.77 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the west and north lines of Section 6, along the north and east lines of Section 4, and along the north and west lines of Section 3 and within above-described tracts of land for use as public roads.

2. Said purchaser promises and agrees to pay for said land the sum of Twenty-six thousand two hundred eighty-eight and 70/100 Dollars (\$26,288.70), in lawful money of the United States, as follows, to wit: Six thousand five hundred seventy-two and 20/100 Dollars (\$6,572.20), upon the execution of this agreement, and the balance in ten

(10) equal installments of One thousand nine hundred seventy-one and 65/100 Dollars (\$1,971.65) each, payable on the 8th day of January of each year beginning January 8th, 1938, and until said purchase price is fully paid. [33] Deferred payments shall bear interest payable semi-annually at six per cent per annum from the date hereof until the said deferred payments are made. All payments shall be made to the seller at its office in the City and County of San Francisco, State of California, and not elsewhere, nor to any other person, nor to any selling agent of said seller. The purchaser may, if he so desire, pay all or any of said installments prior to the time fixed in this contract and interest thereon shall cease from the time of such payment.

3. The following property and property rights are excepted and reserved, to-wit:

(a) Rights of way for all presently existing roads, telephone, telegraph and electric power and pipe lines, sewers, drainage ditches, canals and other reclamation and irrigation works, and the easement to maintain, operate and repair the same;

(b) The easement to enter and construct, maintain, operate and repair additional roads, ditches, canals, laterals and other irrigation works and drainage ditches over and across any of said land along lines of location substantially coincident with the boundaries of said land. The seller agrees to pay said purchaser for the land so taken by it hereafter for such purposes at the time of such taking

a sum equal to the amount paid by the purchaser to the seller for the land so taken.

(c) The right of ingress to and egress from the land herein described for said purposes, and the right to take and use with the minimum of damage to the said land such earth and materials as may be actually necessary to construct, maintain and repair that portion of said works, if any, situate on said premises.

4. The above described land is sold subject to any lease or farming contract now existing in respect to the same.

5. Upon the execution of this agreement and the making of the initial payment the purchaser shall have the right to take possession of said land and thereafter continue in possession so long as he shall not be in default hereunder.

6. The seller shall pay the taxes on said property for the portion of the fiscal year up to the date of this agreement, and the purchaser shall pay the taxes for the balance of this fiscal year. All taxes and all assessments hereafter levied or becoming due upon said land by any irrigation, reclamation, drainage, water storage, or any other district or public corporation, shall be paid by the purchaser. The seller may pay the said taxes or assessments and the insurance, if hereinafter provided for, on behalf of the purchaser, and the same shall become immediately due from the purchaser to the seller, together with interest at the rate of six (6) per cent per annum from the date of payment by the seller

until repaid, and said seller shall have a lien upon any interest of said purchaser in said land for the money paid by it for said insurance, taxes or assessments, together with said interest thereon.

7. Time is of the essence of this agreement and of each and every of the terms, provisions, conditions and stipulations hereof, and the waiver by the seller of any breach of this agreement shall not be held or deemed to be a waiver of the terms of this contract requiring performance of other covenants or terms, nor of the provisions hereof making time of the essence hereof as to other payments thereafter falling due.

8. After full and specific performance by the purchaser of all of his obligations hereunder, the seller shall on written demand cause to be executed and delivered to the purchaser a good and sufficient deed conveying to him the above described premises and appurtenances free and clear of all encumbrances done or suffered by the seller, excepting all taxes, assessments, charges and interest herein required to be paid by the purchaser, said deed shall be in the usual form of deeds of grants and shall contain and provide for all reservations, exceptions, restrictions, conditions and limitations herein mentioned.

9. It is expressly understood that if the purchaser shall not keep or perform all the covenants or conditions herein contained on his part to be kept or performed, or shall fail for a period of thirty (30) days after any sum herein required to

be paid by him becomes due and payable to pay the same, that the seller, at its option, shall be released from all obligations at law or in equity, to convey the said land, and all rights and interests of the purchaser under the agreement shall cease and terminate, and the seller shall have the right to immediate possession of the said land, and all improvements thereon, and the purchaser shall forthwith redeliver possession of the said land to the seller, and all moneys theretofore paid by the purchaser under this agreement, together with all improvements placed on the land, shall be retained by the seller as liquidated and agreed damages for such default, or on said default, the seller, at its option, may declare by notice to the purchaser the entire unpaid balance of the said purchase price to be due and payable, and may proceed, by appropriate action at law or suit in equity, to enforce payment hereof, in which action or suit, seller shall be entitled to recover reasonable attorney fees.

In the event the purchaser shall be in default hereunder, no offer of performance nor tender of deed need be made by the seller, and no notice to quit need be served, said offer, tender and notice being expressly waived by the purchaser.

10. It is further understood that all water rights, whether riparian, appropriative or prescriptive and including the right to receive water pursuant to the terms of the Miller-Haggin Agreement of July 28, 1888, are expressly excepted and reserved from this sale. The purchaser waives any right to object to

and hereby consents to the storage and or impounding of the waters of Kern River and its tributaries, without limit, by the Buena Vista Water Storage District, and or the seller and its assigns, and the purchaser also consents to said District and or the seller and its assigns diverting the waters of said river to riparian and non-riparian lands within or without the watershed of said river. Said right of storage and said right to divert the waters of said river shall be considered as an easement in and shall bind said land, regardless of ownership thereof.

11. No alteration of the terms of this contract shall be valid or binding upon the seller without the written consent of its President or Vice-President.

12. It is understood by the purchaser that all of the above described land is subject to a deed of trust to Bank of California, National Association, as trustee, and it is understood and agreed that the seller is to secure and deliver to the purchaser a full and sufficient deed of reconveyance from the said trustee upon completion of all the payments herein provided for.

13. It is expressly understood and agreed that the above described land is purchased by the purchaser without any representations by the seller or its agents as to the character, fertility or productiveness of the said land, and without any other representations or guaranties of any kind, and that this agreement contains all of the agreements of the parties hereto.

14. In case the said land is part of a larger tract

of land belonging to the seller, and the sale thereof shall separate the balance of the land owned by the seller from any stream or watercourse, such separation shall in no way affect the riparian rights of the land so retained by the seller, but such riparian rights shall be preserved and be unaffected by such sale.

15. Any loss by fire or otherwise shall not affect the obligation of the seller to convey nor of the purchaser to take said property according to the terms of this agreement.

16. The purchaser hereby further agrees not to remove, or permit to be removed from the said land, any improvements, whether placed thereon by the purchaser or by others, and agrees to keep and maintain said improvements in good condition and repair, and to use all reasonable efforts to keep the said land free from squirrels and noxious weeds and grasses, and to cultivate and properly care for the said land in a good and farmer-like manner. [34]

17. Seller may continue, renew or place new insurance on any improvements on the above described land. Prepaid premiums shall be pro-rated as of the date of this agreement, and all premiums on said insurance hereafter becoming due shall be paid by the purchaser. In the event of loss, any insurance recovered shall, at the option of the purchaser, be applied toward the repair or replacement of insured premises, and if not so used, then the same shall be applied toward the payment of any balance due under this agreement, and the surplus, if any, shall be paid to the purchaser.

17a. It is further understood that this sale is made subject to a Grazing Lease, No. 1730, entered into by Seller with C. E. Houchin of Bakersfield, California, dated January 1, 1937, and that Purchaser is not to have possession of the above-described property until the expiration of said Grazing Lease on December 31, 1937. The Purchaser shall be entitled to a pro-rata of the rental of the property in this sale for the period from January 8 to December 31, 1937.

18. Neither this contract nor any interest therein shall be assignable without the written consent of the seller.

19. It is understood and agreed that the stipulations of this agreement are to apply to and bind the heirs, executors and administrators, successors and assigns of the respective parties hereto, except as otherwise herein provided.

20. The word "purchaser," whenever used in this instrument, shall be construed to include the plural as well as the singular number and that the use of the masculine gender in this instrument shall be construed to include the feminine and neuter genders.

In Witness Whereof, the parties hereto have executed this agreement in triplicate the day and year first above written.

[Seal]

MILLER & LUX INCOR-
PORATED

By (Illegible)

Vice President

By W. S. MITCHELL

Assistant Secretary

L. G. HELM

Purchaser

.....

Purchaser

Approved: W. S. M.

Form Approved, Attorney.

Description Approved: I.C.C., Engineer.

Compared.....to.....

Full name of wife of purchaser: Etta Helm.

Address of Purchaser: 1413-17 Bakersfield,

Calif. (Must be inserted.) [35]

Assignment

For value received, the above named purchaser hereby assigns and grants unto.....

.....of....., California,

all of his right, title, interest, claim and demand in and to the foregoing agreement, including the right to demand and receive the deed therein mentioned.

This assignment is subject to the approval of Miller & Lux Incorporated.

.....

Purchaser.

.....

Purchaser.

I hereby accept the assignment of the foregoing agreement and assume and promise to keep and

perform all of the covenants and agreements thereof as therein required.

Assignee.

The foregoing assignment and acceptance is hereby approved.

Dated thisday of....., 19....

MILLER & LUX, INCORPORATED,

By

I consent to the above assignment.

Wife of Purchaser.

PAYMENTS—(Ruled form not filled in.) [36]

EXHIBIT No. 3

DECLARATION OF TRUST

For Quitclaim Deed

See Book 765, Page 372 of Official Record

Whereas, under date of January 8th, 1937, Miller & Lux Incorporated, a corporation, as seller, did make and enter into two certain agreements with L. G. Helm, as purchaser, full terms and conditions of which agreements have been fully read, understood, and are hereby approved by the parties hereto, and which agreements provide for the sale and purchase of the following described real property:

The East half of the southeast quarter ($E \frac{1}{2}$ of S.E. $\frac{1}{4}$) of Section twenty five (25), and the southeast quarter (S.E. $\frac{1}{4}$) of Section thirty-six (36), all in Township twenty-four (24) south, Range twenty-one (21) East, M. D. B. M., in the County of Kings, State of California; and

The North half ($N \frac{1}{2}$) and the east half of the southwest quarter ($E \frac{1}{2}$ of S.W. $\frac{1}{4}$) of Section thirty (30); the south half of the north half ($S. \frac{1}{2}$ of $N. \frac{1}{2}$) of Section twenty-nine (29); the southwest quarter (S.W. $\frac{1}{4}$) and the south half of the northwest quarter ($S \frac{1}{2}$ of N.W. $\frac{1}{4}$) and the west half of the northeast quarter ($W. \frac{1}{2}$ of N.E. $\frac{1}{4}$) of Section thirty-two (32); the west half ($W \frac{1}{2}$) of Section thirty-three (33); and the west half ($W \frac{1}{2}$) of Section thirty-four (34), all in Township twenty-four (24) South, Range twenty-two (22) East, M. D. B. M., in the County of Kings, State of California; and

The north half of the northwest quarter ($N \frac{1}{2}$ of N.W. $\frac{1}{4}$); of Section three (3); the northeast quarter and the north half of the southeast quarter ($N \frac{1}{2}$ of S.E. $\frac{1}{4}$) of Section four (4); all of the north half of the north half ($N \frac{1}{2}$ of $N \frac{1}{2}$), except the northeast quarter of the northeast quarter (N.E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$) and the east 29.69 acres of the northwest quarter of the northeast quarter (N.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$) of Section six (6), all in Township twenty-five (25), south, Range twenty-two (22) East, M. D. B. M., in the County of Kern, State of California; and

The East half of the southwest quarter (E. $\frac{1}{2}$ of S.W. $\frac{1}{4}$), and the southwest quarter of the southwest quarter (S.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$) of Section one (1), and a portion of the north half (N. $\frac{1}{2}$) of said Section one (1) being more particularly described as follows: Beginning at a point on the east line of said Section 1 which bears south 0 degrees 09 minutes West 1322.65 feet from the northeast corner of said Section 1, thence along east line of Section 1, south 0 degrees 09 minutes west 1322.65 feet to the east quarter section corner of Section 1, thence along the east and west quarter section line of Section 1, north 89 degrees 58 minutes west 3052.10 feet, thence along the east line of a one hundred and forty acre tract of land conveyed by Miller & Lux Incorporated to G. Henshaw by deed dated February 24, 1936, north 0 degrees 20 $\frac{3}{4}$ minutes east 1322.55 feet, thence south 89 degrees 58 minutes east 3048.05 feet to the point of beginning; all in township twenty-five (25) south, Range twenty-one (21) East, M. D. B. M., in the County of Kern, State of California.

And Whereas, in truth and in fact, such agreements were executed and made by the said L. G. Helm for and in behalf of himself and the following named persons to-wit:

Lon V. Smith

M. J. Davis

Oscar Rudnick

Morris Laba

L. G. Helm

Geo. L. Bradford

Morris Himovitz

Max Himovitz

Fred E. Borton

each of such persons purchasing and receiving an undivided one-ninth interest under said contracts and each of said persons paying on account of the consideration thus far paid an equal one-ninth thereof, and each of said persons now hereby agreeing to and with the said L. G. Helm and to and with each other, that they will pay and contribute on account of all future payments required by said contracts and otherwise as hereinafter provided, an equal one-ninth each thereof. [37]

Now Therefore, in consideration of the premises the said L. G. Helm and Etta Helm, his wife, do hereby acknowledge and declare that the interest held by the said L. G. Helm under said contracts and all interest held or to be hereafter acquired under said contracts in the land therein described or otherwise acquired in and to said real property is held and shall be held by said L. G. Helm in trust thereof for the following named persons in the proportions set after their names; (Certain of the beneficiaries under said trust having elected that their interest thereunder shall be a joint estate with their wives and in each instance of a joint estate, the interest held by husband and wife in joint tenancy being one-ninth).

1. Lon V. Smith and Jane W. Smith, his wife, as joint tenants, $1/9$.

2. Geo. L. Bradford and Marion Bradford, his wife, as joint tenants, 1/9.

3. M. J. Davis and Lorene M. Davis, his wife, as joint tenants, 1/9.

4. Morris Himovitz, 1/9.

5. Max Himovitz, 1/9.

6. Oscar Rudnick, 1/9.

7. Morris Laba, 1/9.

8. Fred E. Borton and Carrie L. Borton, his wife, as joint tenants, 1/9.

9. L. G. Helm.

Said Trustee shall have and hold the legal title to said contracts and all interest now held or hereafter acquired in and to said real property for the benefit of said beneficiaries and to manage and control the same, to sell, convey, lease, including oil and gas leases, for any period or periods within or extending beyond the life of this trust, including for purposes of developing and producing oil, gas, and other hydrocarbon substances from said real property, to encumber the same and to execute and deliver any such conveyances, encumbrances, leases and oil and gas leases, providing, however, said trustee shall first have obtained from the committee hereinafter provided, written consent to so execute and deliver such conveyances, encumbrances, leases and oil and gas leases.

The trustee shall ascertain and pay any amount of principal and interest which may become due and payable under the terms and conditions of said contracts and also upon any encumbrances hereinafter

placed upon said property including taxes and assessments, providing, however, that each of the beneficiaries shall provide their proportion of the funds necessary for the payment of the same and said trustee shall collect pay out, and distribute all income, profits and receipts from said real property, Excepting, However, that he shall retain the sum of \$1.00 annually in full payment of his services in connection with this trust.

In the event any beneficiary hereunder shall fail to pay his proportion of any sums so expended by the trustee, said trustee is hereby empowered and authorized to advance any such sum and in the event such defaulting beneficiary does not repay such advance within ten days after receipt of written demand therefor from said trustee, then in that event the trustee shall give written notice of such default to each of the remaining beneficiaries and should such remaining beneficiaries or any one of them not purchase the interest in this trust of such defaulting beneficiary within fifteen days of such last mentioned notice, then the trustee, with the written consent of the committee hereinafter referred to, is hereby authorized and directed to proceed to sell and shall sell the interest of such defaulting beneficiary in the manner of the sale of real estate upon foreclosure under deeds of trust securing indebtedness, said trustee giving notice and conducting said sale as provided by statute therefor.

Should sale be so made of the interest of any beneficiary hereunder then such beneficiary whose

interest is so sold shall be debarred from any right, title or interest whatsoever in and to said contracts and real estate, or any beneficial interest [38] therein and of all equity of redemption of the same and the certificate of the trustee to the purchaser at such sale shall be conclusive evidence that such beneficial interest and all title thereto has actually passed to such purchaser, providing, however, that if the interest so sold shall bring more than the money owed by such defaulting beneficiary including the expenses of such sale the trustee shall account and pay to the beneficiary whose interest is so sold, any such excess.

No assignment of any beneficial interest or part thereof shall be valid unless and until the trustee shall receive a duly executed original of such assignment duly accepted by the assignee disclosing the address of such assignee and including upon the part of such assignee an assumption of the obligation of the beneficiaries herein as to the interest so assigned.

There is hereby created a committee of four with whom the trustee shall have an equal vote as if he were a member thereof, which shall have, and is hereby granted, exclusive power to manage and control the property, the subject of the trust, and to lease, including for oil and gas development purposes, sell or otherwise dispose or encumber the same, when in their judgment it is to the advantage of the trust and of the persons interest therein so to do, and said trustee shall execute and deliver

such conveyances, encumbrances, leases and oil and gas leases, as he may be directed to do so by the majority vote of said committee at a meeting duly and regularly called.

In case of vacancy in the trusteeship or in said committee, the same shall be filled and the said committee shall have and is hereby granted full power to choose any of the beneficiaries in this trust to serve on said committee or to act as substitute trustee until a new trustee is appointed, which trustee shall be appointed by a majority vote of the beneficiaries in this trust, and such new trustee shall succeed to the right, powers and authorities of the trustee without any special conveyance or transfer from the former trustee, or otherwise to the new trustee and until such time as such substitute or new trustee shall be appointed, the said committee shall as a unit have, and is hereby granted, full power and control over the trust property, including all of the rights and duties of such trustee.

The trustee herein named shall continue in office until his death, resignation or removal by a final order of court, and each member of the committee hereinafter named shall continue in office until his death, resignation or removal by a final order of the court.

The following named persons are hereby designated as constituting the committee referred to, to-wit:

Lon V. Smith

Morris Himovitz

M. J. Davis

Fred E. Borton

It is further hereby agreed that this trust shall continue for a period of twenty-five years from this date, unless and until sooner terminated by the agreement of the parties hereto, or in accordance with the terms hereinafter set forth.

This trust may be terminated at any time upon the consent and written approval of the holders of two-thirds of the total beneficial interest herein, and upon such termination the property being the subject of this trust shall be conveyed by the trustee to the beneficiaries prorately according to the interest so held, it being understood that in the event at the date of such partition and division should said real property or any portion thereof be subject to any existing oil and gas lease, that all of the beneficiaries at the date of such termination shall participate prorately in all future royalties, rents, issues and profits paid under the terms and conditions of any existing lease or leases.

In the event the beneficiaries herein are unable to decide among themselves [39] as to an equitable partition of said property, then in that event the committee shall divide such property in such equal units as may in their judgment be the most equitable and practicable partition of such property, whereupon each of said beneficiaries shall draw by lot the unit to which they shall become entitled.

Upon the completion of the trust by lapse of

time or otherwise, unless previously said trust property has been so partitioned, same shall be distributed among the beneficiaries in undivided interests in proportion to their respective interest, and all things of value arising therefrom or subject thereto and in the hands of the trustee, shall likewise be distributed.

In Witness Whereof, the said L. G. Helm, as trustee, and the said L. G. Helm and Etta Helm, his wife, as individuals, have executed this declaration and the said beneficiaries have consented thereto, this 29th day of June, 1937.

L. G. HELM,

L. G. HELM, as Trustee.

L. G. HELM,

L. G. HELM, individually.

ETTA HELM,

ETTA HELM, individually.

We, the undersigned, beneficiaries in the foregoing declaration, have read, understood, and do hereby approve the same, and agree to be fully bound thereby.

LON V. SMITH,

OSCAR RUDNICK,

GEO. L. BRADFORD,

FRED E. BORTON,

E. J. DAVIS,

MORRIS LABA,

MORRIS HIMOVITZ,

MAX HIMOVITZ.

State of California,
County of Kern—ss.

On this 22nd day of July, A.D. 1937, before me, Ruth Howard, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm, as Trustee, L. G. Helm, individually, and Etta Helm, individually, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof: I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] RUTH ROWARD,
Notary Public in and for said County and State of
California.

State of California,
County of Kern—ss.

On this 22nd day of July, A. D. 1937, before me, Ruth Howard, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn personally appeared Lon V. Smith, Oscar Rudnick, Geo. L. Bradford, Fred E. Borton, E. J. Davis, Morris Laba, Morris Himovitz and Max Himovitz, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof: I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] RUTH HOWARD,
Notary Public in and for said County and State of California.

Recorded at request of Borton Petrini & Conron
Jul-22-1937 at 27 min. past 10 A.M. in Book 737 of
Official Records Page 158 Kern County Records.

CHAS. H. SHOMATE,

Recorder.

Checked by: B. SHOMATE.

18710 Compared By:

F. HOBERECHT.

(Duly Verified.) [40]

EXHIBIT No. 4

(Copy)

(Typist's note: This page contains information appearing on back of within instrument.)

STANDARD OIL COMPANY OF CALIFORNIA

Dated.....

[42]

This Indenture, dated the 18th day of May, 1938, between L. G. Helm and Etta Helm, his wife, hereinafter referred to as "Grantor," and Standard Oil Company of California, a Delaware corporation, hereinafter referred to as "Grantee,"

Witnesseth:

That Grantor, in consideration of Ten Dollars

(\$10.00) and other valuable considerations, the receipt of which is hereby acknowledged, hereby grants to Grantee, all oil, gas, asphaltum and other hydrocarbons and substances associated therewith, in, on and under the following described land:

The North Half ($N\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Three (3) and the Northeast Quarter ($NE\frac{1}{4}$) of Section Four (4), Township Twenty-five (25) South, Range Twenty-two (22) East, M. D. B. & M., Kern County, California;

The South Half ($S\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of Section Twenty-nine (29); the Northwest Quarter ($NW\frac{1}{4}$) of Section Thirty-three (33), and the Northeast Quarter ($NE\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-four (24) South, Range Twenty-two (22) East, M. D. B. & M., Kings County, California,

with the right to Grantee to enter upon said land and to explore (by geological, geophysical or other methods, whether similar to those specified or not and whether now known or not, including the drilling of shallow holes for the purpose of determining subsurface geological conditions) and drill for, develop, produce, extract, treat, store and remove said minerals thereon and therefrom, and to conduct any and all other operations which Grantee may deem necessary in the premises, including the right to develop and use on said land water necessary for such operations, and the right to construct, use, maintain, erect, replace, change the location

of and remove on and from said land all pipe lines, telephone and telegraph lines, sumps, derricks, plants, buildings and other structures and equipment which Grantee may desire in carrying on its operations on said land, including the right of ingress and egress to and from said land for any and all of said purposes; on condition that in event oil, gas, asphaltum or any other hydrocarbon is not discovered on said land and production thereof is not in actual progress, on or before twenty- (20) years from the date hereof, all the rights, title and interest herein granted shall cease and determine and the estate herein granted shall revert to and become revested in the party then owning the surface title to said land.

Grantee agrees in event it shall develop, produce and remove oil, gas or any other of said substances on and from said land, as compensation for the use by it of the surface of said land and the exercise by it of the privileges granted, to pay to Grantor the following:

(a) The value of the one-eighth ($1/8$ th) part of the crude oil so produced and saved from said land at the current prices paid by Grantee, or any successor of Grantee, to producers for oil of like gravity and quality in the same vicinity.

(b) The value at five cents (5c) per thousand cubic feet of the one-eighth ($1/8$ th) part of the gas produced and saved and sold from said land. For the purposes of this paragraph, gas shall be measured in cubic feet at 14.73

pounds per square inch absolute pressure, at a temperature of 60° Fahrenheit and calculated in accordance with the procedure outlined in California Natural Gasoline Association Bulletin No. TS-353, or any revisions thereof which may be adopted by said association. [43]

(c) The value of six per cent (6%) of all gasoline extracted and saved from gas produced from said land at the prices currently offered or paid by Grantee or any of its present or future subsidiaries to producers for gasoline of like specifications and quality in the same vicinity.

The right to receive said payments shall be a covenant running with the surface title to said land and in event said surface title shall be owned in severalty by two or more persons then said payments shall be apportioned among and paid to such surface owners in the proportion that the surface area owned by each bears to the surface area of the land hereinabove described.

Grantee is authorized, before making any of said payments, to deduct therefrom the one-eighth (1/8th) part of any taxes resulting from or attributable to the discovery or production of oil, gas or any other substances on or from said land.

Grantee shall not be required to pay to Grantor any sum for oil, gas or water produced from said land and used in connection with its operations thereon, nor for any other substances which Grantee has the right to remove therefrom other than oil and gas.

In the event wells are drilled and oil produced in paying quantities upon adjoining property and within 250 feet of the exterior limits of any land herein described, Grantee agrees either to offset such wells by the commencement of actual drilling within ninety (90) days after the production of oil in paying quantities from such wells or release herefrom twenty (20) acres of the herein described premises immediately adjoining or offsetting said producing wells.

The Grantee shall not assign this grant (except to the successor or successors, if any, in the business of Grantee) without the consent, in writing, of Grantor, his successors or assigns.

The provisions hereof shall inure to the benefit of and shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns, and any rights or privileges of Grantee hereunder may be exercised by any of Grantee's subsidiaries.

In Witness Whereof, the parties hereto have executed this agreement.

(s) L. G. HELM,

(s) ETTA HELM.

STANDARD OIL COMPANY
OF CALIFORNIA,

By (s) C. E. BULTMANN,
Contract Agent.

By (s) G. M. POST,
Asst. Secretary.

State of California,
County of Kern—ss.

On this 24 day of May, 1938 before me, M. J. Davis, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

(s) M. J. DAVIS,

Notary Public in and for the County of Kern, State
of California. [44]

EXHIBIT No. 5

(Copy)

No.

LEASE

From

.....

.....

Lessor.

To

.....

.....

Lessee.

Recorded at Request of

.....

.....

Atmin. past M. in
Book of Official Records,
Page of the Records of
County, California.

.....

Recorder.

By

Deputy Recorder.

When recorded return to

Published by

Petroleum World

412 West Sixth St.

Los Angeles, Calif.

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Publications, Inc.)

Exhibit No. 5—(Continued)

OIL AND GAS LEASE

This Agreement, made and entered into this 19th day of May, 1938, by and between L. G. Helm, and Etta Helm, his wife, party of the first part, herein styled "Lessor," and Barnsdall Oil Company, a corporation party of the second part, herein styled "Lessee."

Witnesseth: That for and in consideration of the sum of Ten Dollars, lawful money of the United States of America, to the Lessor paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessor has granted, leased, let and demised, and by these presents does grant, lease, let and demise unto the Lessee, its grantees, successors and assigns, the land and premises hereinafter described, with the sole and exclusive right to the Lessee to drill for, produce, extract and take oil, gas, asphaltum and other hydrocarbons (and water for its operations) from, and to store the same upon, said land during the term hereinafter provided, with the right of entry thereon at all times for said purposes, and to construct, use, maintain, erect, repair and replace thereon and to remove therefrom all pipe lines, telephone and telegraph lines, tanks, machinery, buildings and other structures which the Lessee may de-

Exhibit No. 5—(Continued)

sire in carrying on its business and operations on said land, or adjoining or neighboring premises operated by Lessee, with the further right to the Lessee or any of its subsidiaries to erect, maintain, operate and remove a plant will all necessary appurtenances, for the extraction of gasoline from gas produced from said land and/or other premises in the vicinity of said land, including all rights necessary or convenient thereto, together with rights-of-way for passage over, upon and across, and ingress and egress to and from, said land, for any or all of the above mentioned purposes. The possession by the Lessee of said land shall be sole and exclusive, excepting only that the Lessor reserves the right to occupy said land or to lease the same for agricultural, horticultural, or grazing uses, which uses shall be carried on subject to, and with no interference with, the rights or operations of the Lessee hereunder. The land which is the subject of this lease is situated in the County of Kings, State of California, and is described as follows, to-wit:

East half of Southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of Section Thirty-three (33), and East half of Southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of Section Thirty-four (34) all in Township Twenty-four (24) South, Range Twenty-two (22) East, M.D.B.M. and contains 160 acres, more or less.

To Have And To Hold the same for a term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead

Exhibit No. 5—(Continued)

gas, or other hydrocarbon substances, or either or any of them, is produced therefrom.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty on oil the equal one-eighth part of the proceeds of all oil produced, saved and sold from the leased premises, after making the customary deductions for temperature, water and b.s. at the posted available market price in the district in which the premises are located for oil of like gravity the day the oil is run into purchaser's pipe line or storage tank, and settlement shall be made by Lessee on or before the 25th day of each month for accrued royalties for the preceding calendar month. At Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, Lessee shall deliver into Lessor's tanks on the leased premises, or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's royalty oil, provided that Lessee may at any time purchase and take Lessor's royalty oil at said posted available market price. No royalty shall be due the Lessor for or on account of oil lost through evaporation, leakage or otherwise prior to the marketing of the same or delivery to Lessor if royalty oil is being taken in kind.

2. For all gas produced, saved and sold from said land by Lessee, the Lessee shall pay as royalty the $\frac{1}{8}$ th part of the net proceeds from the sale of

Exhibit No. 5—(Continued)

such gas, but nothing herein contained shall be deemed to obligate the Lessee to produce, save, sell or otherwise dispose of gas from said land. For the purpose of having gasoline extracted from gas produced from said land, the Lessee may transport, or cause to be transported, to a gasoline extraction plant located either on said land or on other lands, all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported and such meter readings, together with the results of content tests by recognized methods and made at approximately regular intervals, at least once every month, shall furnish the basis for computation of the amounts of gasoline and residue gas to be credited to this lease. Gas used or consumed, or lost in the operations of any such plant, shall be free of charge, and Lessee shall not be held accountable to the Lessor for the same or for any royalty thereon. Lessee shall not be required to pay royalty for or on account of any gas used for repressuring any oil-bearing formation which is being produced from by a well or wells on the leased premises, even though such repressuring is done by injecting such gas into wells not situated on the leased premises. The Lessor shall be entitled to gas free of charge from any gas wells on the leased premises for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated by Lessee, the taking and use of said gas

Exhibit No. 5—(Continued)

to be at the Lessor's sole risk and expense at all times.

3. Any casinghead gasoline extracted from gas produced from said land shall, at the option of the Lessee, be returned to the oil produced therefrom and shall be treated as a part thereof; otherwise the Lessee shall pay to the Lessor as royalty for such extracted gasoline the equal one-eighth part of the net proceeds of the sale thereof after deducting transportation and extraction costs, or of the Lessee's portion thereof if extracted on a royalty basis. If there shall be no available market and/or no public or open market price for the gasoline at the place of extraction, then the Lessee shall be entitled to sell and/or dispose of all the gasoline for the best price and on the best terms obtainable, but in no case shall settlement of royalty be at a less price than that obtained by the Lessee for its portion of the gasoline.

4. The Lessee shall not be required to account to the Lessor for, or pay royalty on, oil, gas or water produced by the Lessee from said land and used by it in its operations hereunder, but it may use such oil, gas and water free of charge.

5. It is expressly understood and agreed that the considerations expressed and/or referred to herein include all rental for the first five years of the term hereof. Commencing with the sixth year of the term hereof, if the Lessee has not theretofore commenced drilling operations on said land or ter-

Exhibit No. 5—(Continued)

minated this lease as herein provided, the Lessee shall pay or tender to the Lessor in advance, as rental, the [45] sum of Twenty-five (\$25.00) Dollars per acre for so much of said land as may then still be held under this lease, until drilling operations are commenced or this lease terminated as herein provided.

6. The Lessee agrees to commence drilling operations on said land within ten years from the date hereof (unless the Lessee has sooner commenced the drilling of an offset well on said land as herein provided) and to prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; or it may at any time within said period terminate this lease and surrender said land as hereinafter provided. No implied covenant shall be read into this lease requiring the Lessee to drill or to continue drilling on said land, or fixing the measure of diligence therefor. The Lessee may elect not to commence or prosecute the drilling of a well on said land as above provided, and thereupon this lease shall terminate.

7. If the Lessee shall elect to drill on said land, as aforesaid, and oil or gas shall not be obtained in paying quantities in the first well drilled, the Lessee shall, within six (6) months after the completion or abandonment of the first well, commence on said land drilling operations for a second well, and shall

Exhibit No. 5—(Continued)

prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or until the well is drilled to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; and the Lessee shall in like manner continue its operations until oil or gas in paying quantities is found, but subject always to the terms and conditions hereof and with the rights and privileges to the Lessee herein given.

8. If oil or gas is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee, subject to the provisions hereof and to the suspension privileges hereinafter set forth, shall continue to drill additional wells on said land as rapidly as one string of tools working with reasonable diligence can complete the same, until there shall have been completed on said land as many wells as shall equal the total acreage then held under this lease divided by twenty; whereupon the Lessee shall hold all of the land free of further drilling obligations; provided, that the Lessee may defer the commencement of drilling operations for the second or any subsequent well for a period not to exceed six (6) months from the date of completion of the well last preceding it; provided further, if oil is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee may further defer the commencement of drilling operations for the second or any subsequent well on said land for a period not to exceed two (2) years from

Exhibit No. 5—(Continued)

and after six (6) months from the date of completion of the well last preceding it, by paying or tendering to the Lessor as rental, monthly in advance commencing with the expiration of such six (6) months' period, a sum equal to Five (\$5.00) Dollars for each acre of land then subject to this lease, until drilling is resumed or drilling obligations are terminated as herein provided. The Lessee shall be entitled to drill as many additional wells on said land as it desires. Except as herein otherwise provided, it is agreed that the Lessee shall drill such wells and operate each completed well with reasonable diligence and in accordance with good oil field practice so long as such wells shall produce oil in paying quantities while this lease is in force as to the portion of said land on which such well or wells are situated; but in conformity with any reasonable conservation or curtailment program affecting the drilling of wells or the production of oil and/or gas from said land, which the Lessee may either voluntarily or by order of any authorized governmental agency subscribe to or be subject to. Drilling and producing operations hereunder may also be suspended while the price offered generally to producers in the same vicinity for oil of the quality produced from said land is seventy-five (75) cents or less per barrel at the well, or when there is no available market for the same at the well.

9. If the Lessee shall complete a well or wells on said land which shall fail to produce oil in paying

Exhibit No. 5—(Continued)

quantities but which produces gas in paying quantities, the Lessee, shall either sell so much of said gas as it may be able to find a market for, and pay the Lessor the royalty provided herein on the volume of gas so sold, or Lessee may, if it so elects, suspend the operation of such gas well or wells from time to time and during the period of such suspensions pay or tender to the Lessor as rental monthly in advance, a sum equal to One Dollar (\$1.00) per acre for so much of the acreage then held under this lease, such rental to continue until producing operations are resumed and royalties are paid to the Lessor for gas sold as above provided. It is further understood and agreed that if the Lessee shall complete a well which shall fail to produce oil in paying quantities, but which produces gas in paying quantities, it shall not be obliged to conduct any further drilling operations on said land (except the drilling of offset wells as hereinafter provided) unless and until, in its judgment, the drilling of such additional wells under the provision of this lease is warranted in view of existing or anticipated market requirements.

10. If it should hereafter appear that the Lessor at the time of making this lease owns a less interest in the leased land than the fee simple estate or the entire interest in the oil and gas under said land, then the rentals and royalties accruing hereunder shall be paid to the Lessor in the proportion which his interest bears to the entire fee simple estate or to the entire estate in said oil and gas.

Exhibit No. 5—(Continued)

11. There is hereby expressly reserved to the Lessor, and as well to the Lessee, the right and privilege to convey, transfer or assign in whole or in part its interest in this lease or in the leased premises or in the oil and/or gas therein or produced therefrom, but if the Lessor shall sell or transfer any part or parts of the leased premises or any interest in the oil and/or gas under any part or parts thereof the Lessee's drilling obligations shall not thereby be altered, increased or enlarged, but the Lessee may continue to operate the leased premises and pay and settle rents and royalties as an entirety.

12. In the event that a well is drilled upon adjoining property within 250 feet of the exterior limits of any land at the time embraced in this lease and oil or gas is produced therefrom in paying quantities, and the drilling requirements as specified in paragraph 8 hereof are not fully complied with, and the owner of such well shall operate the same and market the oil or gas produced therefrom, then the lessee agrees to offset such well by the commencement of drilling operations within ninety days after it is ascertained that the production of oil or gas from such well is in paying quantities and that the operator thereof is then producing and marketing oil or gas therefrom. For the purpose of satisfying obligations hereunder such offset well or wells shall be considered as other wells required to be drilled hereunder.

13. The obligations of the Lessee hereunder shall be suspended while the Lessee is prevented from complying therewith, in whole or in part, by strikes, lockouts, action of the elements, accidents, rules and regulations of any Federal, State, Municipal or other governmental agency, or other matters or conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not.

14. Water produced by the Lessee but not used by it in its operations hereunder, may be used by the Lessor for surface operations on said land.

15. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first Monday of March in each year, and seven-eighths of the taxes levied and assessed against the petroleum mineral rights. Lessor agrees to pay all taxes levied and assessed against the land as such and one-eighth of the taxes levied and assessed against the petroleum mineral rights. In the event the State, United States or any municipality levies a severance or gross production tax on the oil produced hereunder, then and in that event the Lessee shall pay seven-eighths of said tax and Lessor shall pay one-eighth of said tax.

16. The Lessee agrees not to drill any well on said land within one hundred (100) feet of the now existing buildings thereon without the written consent of the Lessor. The Lessee agrees to pay all damages directly occasioned by its operations to crops on said land.

Exhibit No. 5—(Continued)

17. The Lessor may at all reasonable times examine said land, the work done and in progress thereon, and the production therefrom, and may inspect the books kept by the Lessee in relation to the production from said land, to ascertain the production and the amount saved and sold therefrom. The Lessee agrees, on written request, to furnish to the Lessor copies of logs of all wells drilled by the Lessee on said land. [46]

18. All the labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of the Lessee, and the Lessor shall not be chargeable with, or liable for, any part thereof; and the Lessee shall protect said land against liens of every character arising from its operations thereon.

19. Upon the written request of the Lessor, the Lessee agrees to lay all pipe lines which it constructs through cultivated fields, below plow depth, and upon similar request agrees to fence all sump holes or other excavations to safeguard livestock on said land.

20. The Lessee shall have the right at any time to remove from said land all machinery, rigs, piping, casing, pumping stations and other property and improvements belonging to or furnished by the Lessee, provided that such removal shall be completed within a reasonable time after the termination of this lease. Lessee agrees after termination of this lease to fill all sump holes and other excavations made by it.

Exhibit No. 5—(Continued)

21. If royalty oil is payable in cash, Lessee may deduct therefrom a proportionate part of the cost of treating unmerchantable oil produced from said premises to render same merchantable. In the event such oil is not treated on the leased premises, Lessor's cash royalty shall also bear a corresponding proportionate part of the cost of transporting the oil to the treating plant. Nothing herein contained shall be construed as obligating Lessee to treat oil produced from the herein described premises. If Lessor shall elect to receive royalty oil in kind, such royalty oil shall be of the same quality as that removed from the leased premises for Lessee's own account, and if Lessee's own oil shall be treated before such removal, Lessor's oil will be treated therewith before delivery to Lessor and Lessor in such event will pay a proportionate part of the cost of treatment.

22. Upon the violation of any of the terms or conditions of this lease by the Lessee and the failure to begin to remedy the same within 90 days after written notice from the Lessor so to do, then, at the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting 20 acres surrounding each well producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such

Exhibit No. 5—(Continued)

default, and upon payment of the sum of Ten Dollars (\$10.00) to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

23. All royalties and rents payable in money hereunder may be paid to the Lessor by mailing or delivering a check therefor to Bank of America N. T. & S. A. Bank at Bakersfield, Calif., its successors and assigns, herein designated by the Lessor as depository, the Lessor hereby granting to said depository full power and authority on behalf of the Lessor, his heirs, executors, administrators, successors and assigns, to collect and receipt for all sums of money due and payable from the Lessee to the Lessor hereunder. No change in the ownership of the land or minerals covered by this lease, and no assignment of rents or royalties shall be binding on the Lessee until it has been furnished with satisfactory written evidence thereof.

24. Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that the Lessee, at its option may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described land; and, in the event it exercises such option, it shall be subrogated to the rights of any holder or

Exhibit No. 5—(Continued)

holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rentals accruing hereunder.

25. If and when any oil produced from the demised premises shall for any reason be unmarketable at the well at the price mentioned in paragraph 8 hereof, the Lessor agrees in such case to take and receive his royalty in kind, and should he fail or refuse so to do, then the Lessee may sell the same at the best price obtainable, but not less than the price which the Lessee may be receiving for its own oil of the same quality.

26. The words "drilling operations" as used in this lease shall be held to mean any work or actual operations undertaken or commenced in good faith for the purpose of carrying out any of the rights, privileges or duties of the Lessee under this lease, followed diligently and in due course by the construction of a derrick and other necessary structures for the drilling of an oil or gas well, and by the actual operation of drilling in the ground.

27. On the expiration or sooner termination of this lease, Lessee shall quietly and peaceably surrender possession of the premises to Lessor and deliver to him a good and sufficient quitclaim deed, and so far as practicable cover all sump holes and excavations made by Lessee. Before removing the case from any abandoned well Lessee shall notify Lessor of the intention so to do, and if Lessor with-

Exhibit No. 5—(Continued)

in five (5) days thereafter shall inform Lessee in writing of Lessor's desire to convert such well into a water well, and for that purpose to retain and purchase casing therein, Lessee will leave therein such amount of casing as Lessor may require for said purpose, provided such procedure is lawful and will not violate any rule or order of any official, commission or authority then having jurisdiction in such matters, and provided further that Lessor pay to Lessee fifty (50) per cent of the original cost of the casing on the ground.

28. Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage covered thereby, with the privilege of retaining twenty (20) acres surrounding each producing or drilling well, and thereupon Lessee shall be released from all further obligations and duties as to the area so quitclaimed, and all rentals and drilling requirements shall be reduced pro rata. All lands quitclaimed shall remain subject to the easements and rights-of-way hereinabove provided for. Except as so provided, full right to the land so quitclaimed shall revert in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the land quitclaimed within three hundred (300) feet of any producing or drilling well retained by Lessee.

29. If this lease shall be assigned to a particular part or as to particular parts of the leased premises, such division or severance of the lease shall con-

Exhibit No. 5—(Continued)

stitute and create separate and distinct holdings under the lease of and according to the several portions of the leased premises as thus divided, and the holder or owner of each such portion of the leased premises shall be required to comply with and perform the Lessee's obligations under this lease for, and only to the extent of, his portion of the leased area, and performance thereof shall be sufficient to protect and validate this lease as to his portion of the leased area notwithstanding the obligations of the lease may not be fully performed as to another part or portion thereof.

30. This lease and all its terms, conditions and stipulations shall extend to and be binding upon the heirs, executors, administrators, grantees, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the date first hereinabove written.

L. G. HELM

ETTA HELM

Lessor

BARNSDALL OIL COMPANY

By R. A. BROOMFIELD, JR.

Vice-Pres.

By PAUL STANLEY

Asst. Sec'y

Lessee

Witness:

.....
.....

Exhibit No. 5—(Continued)

Approved:

Land Dept.

Geol. Dept.

Form Approved:

Legal Dept. [47]

State of California,
County of Kern—ss.

On this 23rd day of May, in the year nineteen hundred and thirty-eight, before me, M. J. Davis, a Notary Public in and for the County of Kern, State of California, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] M. J. DAVIS,
Notary Public in and for the County of Kern, State
of California.

Exhibit No. 5—(Continued)

State of California,
County of Los Angeles—ss.

On this 20th day of May, A. D. 1938, before me, Nelle Council, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared R. A. Broomfield, Jr. and Paul Stanley, known to me to be the Vice-President and Assistant Secretary, respectively, of the Barnsdall Oil Company, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] NELLE COUNCIL

Notary Public in and for said County and State.

My Commission Expires June 24, 1939. [48]

EXHIBIT No. 6

(Copy)

No.

LEASE

From

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Lessor.

To

.....

.....

Lessee.

Recorded at Request of

.....

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At.....min. past.....M. in
Book...of Official Rec-
ords, Page of the
Records of.....
County, California.

.....

Recorder.

By

Deputy Recorder.

When recorded return to

Published by

Petroleum World

412 West 6th Street

Los Angeles, Calif.

(Copyright 1935 by Pal-
mer Publications, Inc.)

Exhibit No. 6—(Continued)

OIL AND GAS LEASE

This Agreement, made and entered into this 20th day of May, 1938, by and between L. G. Helm and Etta Helm, husband and wife, party of the first part, herein styled "Lessor," and Pacific Western Oil Corporation, a Delaware corporation, party of the second part, herein styled "Lessee."

Witnesseth: That for and in consideration of Ten (\$10.00) Dollars lawful money of the United States of America, to the Lessor paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessor has granted, leased, let and demised, and by those presents does grant, lease, let and demise unto the Lessee, its grantees, successors and assigns, the land and premises hereinafter described, with the sole and exclusive right to the Lessee to drill for, produce, extract, take and remove oil, gas, asphaltum and other hydrocarbons (and water without cost for its operations) from, and to store the same upon, said land during the term hereinafter provided, with the right of entry thereon at all times for said purposes, and to construct, use, maintain, erect, repair and replace thereon and to remove therefrom all pipe lines, telephone and telegraph lines, tanks, machinery, buildings and other structures which the Lessee may desire in carrying on its business

Exhibit No. 6—(Continued)

and operations on said land, with the further right to the Lessee or any of its subsidiaries to erect, maintain, operate and remove a plant with all necessary appurtenances, for the extraction of gasoline from gas produced from said land including all rights necessary or convenient thereto, together with rights-of-way for passage over, upon and across, and ingress and egress to and from, said land, for any or all of the above mentioned purposes. The possession by the Lessee of said land shall be sole and exclusive, excepting only that the Lessor reserves the right to occupy said land or to lease the same for agricultural, horticultural, or grazing uses, which uses shall be carried on subject to, and with no interference with, the rights or operations of the Lessee hereunder. The land which is the subject of this lease is situated in the County of Kings, State of California, and is described as follows, to-wit:

West Half of Northeast Quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 32, Township 24 South, Range 22 East, M. D. B. & M.,

and contains 80 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom.

In consideration of the premises it is hereby mutually agreed as follows:

Exhibit No. 6—(Continued)

1. Lessee shall pay Lessor as royalty on oil the equal one-eighth part of the proceeds of all oil produced, saved and sold from the leased premises, after making the customary deductions for temperature, water and b. s. at the posted available market price in the district in which the premises are located for oil of like gravity the day the oil is run into purchaser's pipe line or storage tank, and settlement shall be made by Lessee on or before the 25th day of each month for accrued royalties for the preceding calendar month. At Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, Lessee shall deliver into Lessor's tanks on the leased premises, or at mouth of well to pipe line designated by Lessor free of cost, Lessor's royalty oil, provided that Lessee may at any time purchase and take Lessor's royalty oil at said posted available market price. No royalty shall be due the Lessor for or on account of oil lost through evaporation, leakage or otherwise prior to the marketing of the same or delivery to Lessor if royalty oil is being taken in kind.

2. For all gas produced, saved and sold from said land by Lessee, the Lessee shall pay as royalty the one-eighth part of the net proceeds from the sale of such gas, but nothing herein contained shall be deemed to obligate the Lessee to produce, save, sell or otherwise dispose of gas from said land. For the purpose of having gasoline extracted from

Exhibit No. 6—(Continued)

gas produced from said land, the Lessee may transport, or cause to be transported, to a gasoline extraction plant located either on said land or on other lands, all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported and such meter readings, together with the results of content tests by recognized methods made at approximately regular intervals, at least once every month, shall furnish the basis for computation of the amounts of gasoline and residue gas to be credited to this lease. Gas used or consumed, or lost in the operations of any such plant, shall be free of charge, and Lessee shall not be held accountable to the Lessor for the same or for any royalty thereon. Lessee shall not be required to pay royalty for or on account of any gas used for repressuring any oil-bearing formation which is being produced from by a well or wells on the leased premises, even though such repressuring is done by injecting such gas into wells not situated on the leased premises. The Lessor shall be entitled to gas free of charge from any gas wells on the leased premises for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated by Lessee, the taking and use of said gas to be at the Lessor's sole risk and expense at all times.

2-a. In the event that the gas produced and saved from said land by lessee is processed under

Exhibit No. 6—(Continued)

a contract or contracts with others for the extraction of gasoline therefrom, lessee shall pay to lessor as royalty on the residue gas credited to this lease after deduction of the amount thereof used or consumed or lost in the operation of the gasoline extraction plant, and in lieu of the royalty on gas produced and saved from said land provided to be paid in paragraph 2 hereof, the equal one-eighth part of any royalty which may be received by lessee under the terms and provisions of any such contract or contracts; nothing herein contained, however, shall require lessee to sell or cause to be sold such residue gas or any part thereof unless there is a market for the same at the well.

3. Lessee shall pay to the Lessor as royalty for extracted gasoline the equal one-eighth part of the net proceeds of the sale thereof after deducting transportation and extraction costs, or of the Lessee's portion thereof if extracted on a royalty basis. If there shall be no available market and/or no public or open market price for the gasoline at the place of extraction, then the Lessee shall be entitled to sell and/or dispose of all the gasoline for the best price and on the best terms obtainable, but in no case shall settlement of royalty be at a less price than that obtained by the Lessee for its portion of the gasoline.

4. The Lessee shall not be required to account to the Lessor for, or pay royalty on, oil, gas or water produced by the Lessee from said land and

Exhibit No. 6—(Continued)

used by it in its operations hereunder, but it may use such oil, gas and water free of charge.

5. Coincidentally with the execution of this lease, Lessee has paid to Lessor a cash consideration in the sum of Two Thousand Dollars (\$2,000.00) as rental for the right, if Lessee so elects, to defer the commencement of any drilling operations upon the demised premises for a period of five years from and after the date hereof, that is, to and including the 19th day of May, 1943.

5(a). Commencing with the sixth year of the term hereof, if the Lessee has not theretofore commenced drilling operations on said land or terminated this lease as herein provided, the Lessee shall pay or tender to [49] the Lessor annually in advance, as rental, the sum of Five (\$5.00) Dollars per acre per year for so much of said land as may then still be held under this lease, until drilling operations are commenced or this lease terminated as herein provided.

6. The Lessee agrees to commence drilling operations on said land within ten (10) years from the date hereof (unless the Lessee has sooner commenced the drilling of an offset well on said land as herein provided) and to prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; or it may at any time within said period terminate this lease and surrender said land

Exhibit No. 6—(Continued)

as hereinafter provided. No implied covenant shall be read in this lease requiring the Lessee to drill or to continue drilling on said land, or fixing the measure of diligence therefor. The Lessee may elect not to commence or prosecute the drilling of a well on said land as above provided, and thereupon this lease shall terminate.

7. If the Lessee shall elect to drill on said land, as aforesaid, and oil or gas shall not be obtained in paying quantities in first well drilled, the Lessee shall, within six (6) months after the completion or abandonment of the first well, commence on said land drilling operations for a second well, and shall prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or until the well is drilled to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; and the Lessee shall in like manner continue its operations until oil or gas in paying quantities is found, but subject always to the terms and conditions hereof and with the rights and privileges to the Lessee herein given.

8. If oil or gas is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee, subject to the provisions hereof and to the suspension privileges hereinafter set forth, shall continue to drill additional wells on said land as rapidly as one string of tools working with reasonable diligence can complete the same, until there shall have been completed on said land as many

Exhibit No. 6—(Continued)

wells as shall equal the total acreage then held under this lease divided by twenty; whereupon the Lessee shall hold all of the land free of further drilling obligations; provided, that the Lessee may defer the commencement of drilling operations for the second or any subsequent well for a period not to exceed six (6) months from the date of completion of the well last preceding it. Except as herein otherwise provided, it is agreed that the Lessee shall drill such wells and operate each completed oil well with reasonable diligence and in accordance with good oil field practice so long as such wells shall produce oil in paying quantities while this lease is in force as to the portion of said land on which such well or wells are situated; but in conformity with any reasonable conservation or curtailment program affecting the drilling of wells or the production of all oil and/or gas from said land, which the Lessee may either voluntarily or by order of any authorized governmental agency subscribe to or be subject to. Drilling and producing operations hereunder may also be suspended while the price offered generally to producers in the same vicinity for oil of the quality produced from said land is seventy-five (75) cents or less per barrel at the well, or when there is no available market for the same at the well.

8-a. Anything in this lease contained to the contrary notwithstanding, Lessee shall not be required under the provisions hereof to drill on the demised

Exhibit No. 6—(Continued)

premises a greater number of wells for oil and/or gas in proportion to the acreage involved than are drilled on adjoining lands and if adjoining lands are developed for oil and/or gas on the basis of a greater number of acres per well than is specified in paragraph 8 of this lease, the drilling obligations of this lease shall be deemed fulfilled when Lessee shall have drilled and completed on the demised premises wells for oil and/or gas on the same acreage basis per well as is used for the development of adjoining lands for oil and/or gas; provided, however, Lessee shall not be required in any event to drill on the demised premises in excess of one well to twenty (20) acres, including offsets.

9. If the Lessee shall complete a well or wells on said land which shall fail to produce oil in paying quantities but which produces gas in paying quantities, the Lessee, shall either sell so much of said gas as it may be able to find a market for, and pay the Lessor the royalty provided herein on the volume of gas so sold, or Lessee may, if it so elects, suspend the operation of such gas well or wells from time to time and during the period of such suspension pay or tender to the Lessor as rental monthly in advance, a sum equal to \$5.00 per acre for so much of the acreage then held under this lease, such rental to continue until producing operations are resumed and royalties are paid to the Lessor for gas sold as above provided. It is further understood and agreed that if the Lessee shall

Exhibit No. 6—(Continued)

complete a well which shall fail to produce oil in paying quantities, but which produces gas in paying quantities, it shall not be obliged to conduct any further drilling operations on said land (except the drilling of offset wells as hereinafter provided) unless and until, in its judgment, the drilling of such additional wells under the provision of this lease is warranted in view of existing or anticipated market requirements.

10. If it should hereafter appear that the Lessor at the time of making this lease owns a less interest in the leased land than the fee simple estate or the entire interest in the oil and gas under said land, then the rentals and royalties accruing hereunder shall be paid to the Lessor in the proportion which his interest bears to the entire fee simple estate or to the entire estate in said oil and gas.

11. There is hereby expressly reserved to the Lessor, and as well to the Lessee, the right and privilege to convey, transfer or assign in whole or in part its interest in this lease or in the leased premises or in the oil and/or gas therein or produced therefrom, but if the Lessor shall sell or transfer any part or parts of the leased premises or any interest in the oil and/or gas under any part or parts thereof the Lessee's drilling obligations shall not thereby be altered, increased or enlarged, but the Lessee may continue to operate the leased premises and pay and settle rents and royalties as an entirety.

Exhibit No. 6—(Continued)

12. In the event a well is drilled on adjoining property within three hundred thirty (330) feet of the exterior limits of any land at the time embraced in this lease and oil or gas is produced therefrom in paying quantities and the drilling requirements as specified in paragraph 8 hereof are not fully complied with, and the owner of such well shall operate the same and market the oil or gas produced therefrom, then the Lessee agrees to offset such well by the commencement of drilling operations within ninety days after it is ascertained that the production of oil or gas from such well is in paying quantities and that the operator thereof is then producing and marketing oil or gas therefrom. For the purpose of satisfying obligations hereunder such offset well or wells shall be considered as other wells required to be drilled hereunder.

13. The obligations of the Lessee hereunder shall be suspended while the Lessee is prevented from complying therewith, in whole or in part, by strikes, lockouts, action of the elements, accidents, rules and regulations of any Federal, State, Municipal or other governmental agency, or other matters or conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not.

14. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first Monday of March in

Exhibit No. 6—(Continued)

each year, and seven-eighths of the taxes levied and assessed against the petroleum mineral rights. Lessor agrees to pay all taxes levied and assessed against the land as such and one-eighth of the taxes levied and assessed against the petroleum mineral rights. In the event the State, United States or any municipality levies a license, severance, production or other tax on the oil produced hereunder, or on the Lessee's right to operate, then and in that event the Lessee shall pay seven-eighths of said tax and Lessor shall pay one-eighth of said tax.

15. The Lessee agrees not to drill any well on said land within one hundred (100) feet of the now existing buildings thereon without the written consent of the Lessor. The Lessee agree to pay all damages directly occasioned by its operations to crops on said land.

16. The Lessor may at all reasonable times examine said land, the work done and in progress thereon, and the production therefrom, and may inspect the books kept by the Lessee in relation to the production from said land, to ascertain the production and the amount saved and sold therefrom. The Lessee agrees, on written request, to furnish to the Lessor copies of logs of all wells drilled by the Lessee on said land.

17. All the labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of the Lessee, and the Lessor shall not be chargeable with, or

Exhibit No. 6—(Continued)

liable for, any part thereof; and the Lessee shall protect said land against liens of every character arising from its operations thereon. [50]

18. Upon the written request of the Lessor, the Lessee agrees to lay all pipe lines which it constructs through cultivated fields, below plow depth, and upon similar request agrees to fence all sump holes or other excavations to safeguard livestock on said land.

19. The Lessee shall have the right at any time to remove from said land all machinery, rigs, piping, casing, pumping stations and other property and improvements belonging to or furnished by the Lessee, provided that such removal shall be completed within a reasonable time after the termination of this lease. Lessee agrees after termination of this lease to fill all sump holes and other excavations made by it.

20. If royalty on oil is payable in cash, Lessee may deduct therefrom a proportionate part of the cost of treating oil produced from said premises to render same merchantable as pipe line oil. In the event such oil is not treated on the leased premises, Lessor's cash royalty shall also bear a corresponding proportionate part of the cost of transporting the oil to the treating plant. Nothing herein contained shall be construed as obligating Lessee to treat oil produced from the herein described premises. If Lessor shall elect to receive royalty oil in kind, such royalty oil shall be of the same quality

Exhibit No. 6—(Continued)

as that removed from the leased premises for Lessee's own account, and if Lessee's own oil shall be treated before such removal, Lessor's oil will be treated therewith before delivery to Lessor and Lessor in such event will pay a proportionate part of the cost of treatment.

21. Upon the violation of any of the terms or conditions of this lease by the Lessee and the failure to begin to remedy the same within 90 days after written notice from the Lessor so to do, then, at the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting ten (10) acres surrounding each well producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such default, and upon payment of the sum of Ten (\$10) Dollars to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

22. All royalties and rents payable in money hereunder may be paid to the Lessor by mailing or delivering a check therefor to Anglo-American National Bank at Bakersfield, California, its succes-

Exhibit No. 6—(Continued)

sors and assigns, herein designated by the Lessor as depositary, the Lessor hereby granting to said depositary full power and authority on behalf of the Lessor, his heirs, executors, administrators, successors and assigns, to collect and receipt for all sums of money due and payable from the Lessee to the Lessor hereunder. No change in the ownership of the land or minerals covered by this lease, and no assignment of rents or royalties shall be binding on the Lessee until it has been furnished with satisfactory written evidence thereof.

23. Lessor hereby warrants and agrees to defend title to the land herein described, and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described land; and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rentals accruing hereunder.

24. If and when any oil produced from the demised premises shall for any reason be unmarketable at the well at the price mentioned in paragraph 8 hereof, the Lessor agrees in such case to take and receive his royalty in kind, and should he fail or refuse so to do, then the Lessee may sell the same at the best price obtainable, but not less than the price which the Lessee may be receiving for its own oil of the same quality.

Exhibit No. 6—(Continued)

25. The words “drilling operations” as used herein shall be held to mean any work or actual operations undertaken or commenced in good faith for the purpose of carrying out any of the rights, privileges or duties of the Lessee under this lease, followed diligently and in due course by the construction of a derrick and other necessary structures for the drilling of an oil or gas well, and by the actual operation of drilling in the ground.

26. On the expiration or sooner termination of this lease, Lessee shall quietly and peaceably surrender possession of the premises to Lessor and deliver to him a good and sufficient quitclaim deed, and so far as practicable cover all sump holes and excavations made by Lessee. Before removing the casing from any abandoned well Lessee shall notify Lessor of the intention so to do, and if Lessor within five (5) days thereafter shall inform Lessee in writing of Lessor's desire to convert such well into a water well, and for that purpose to retain and purchase casing therein, Lessee will leave therein such amount of casing as Lessor may require for said purpose, provided such procedure is lawful and will not violate any rule or order of any official, commission or authority then having jurisdiction in such matters, and provided further that Lessor pay to Lessee fifty (50) per cent of the original cost of the casing on the ground.

27. Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage

Exhibit No. 6—(Continued)

covered thereby, with the privilege of retaining ten (10) acres surrounding each producing or drilling well, and thereupon Lessee shall be released from all further obligations and duties as to the area so quitclaimed, and all rentals and drilling requirements shall be reduced pro rata. All lands quitclaimed shall remain subject to the easements and rights-of-way hereinabove provided for. Except as so provided, full right to the land so quitclaimed shall revert in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the land quitclaimed within five hundred (500) feet of any producing or drilling well retained by Lessee.

28. If this lease shall be assigned as to a particular part or as to particular parts of the leased premises, such division or severance of the lease shall constitute and create separate and distinct holdings under the lease of and according to the several portions of the leased premises as thus divided, and the holder or owner of each such portion of the leased premises shall be required to comply with and perform the Lessee's obligations under this lease for, and only to the extent of, his portion of the leased area, provided that nothing herein shall be construed to enlarge or multiply the drilling or rental obligations, and provided further that the commencement of the drilling operations and the prosecution thereof, as provided in paragraph six hereof, either by the Lessee or any assignee hereunder, shall protect the lease as a whole.

Exhibit No. 6—(Continued)

29. Notwithstanding anything in this Lease to the contrary, Lessors and/or their duly authorized agent or agents shall, during each calendar year during which this Lease is in force and effect, make at least one inspection, examination and/or audit of the records of the Lessee in connection with the Lessee's operations on said lands and of the methods, devices, meters and gauges and/or measurements used in connection with such operations, and, on failure so to do, and/or on failure of Lessors to make written objection thereto within three (3) months after such inspection, examination and/or audit, such records, operations, methods, devices, meters, gauges, measurements and accountings shall be conclusively deemed to be correct.

30. This lease and all its terms, conditions and stipulations shall extend to and be binding upon the heirs, executors, administrators, grantees, successors and assigns of the parties hereto.

31. Any notice from the Lessor to the Lessee must be given by sending the same by registered mail addressed to the Lessee at 1000 Subway Terminal Bldg., Los Angeles, California, and any notice from the Lessee to the Lessor must be given by sending the same by registered mail, addressed to the Lessor at El Tejon Hotel, Bakersfield, California.

Exhibit No. 6—(Continued)

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the date first hereinabove written.

(s) L. G. HELM,

(s) ETTA HELM.

Lessor

Witness:

[Seal]

PACIFIC WESTERN OIL
CORPORATION,

(s) By EMIL KLUTH,

Vice-President.

By D. T. STAPLES,

Asst. Secretary.

Lessee. [51]

State of California,
County of Kern—ss.

On this 23rd day of May, in the year nineteen hundred and thirty-eight, before me, M. J. Davis, a Notary Public in and for the County of Kern, State of California, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Exhibit No. 6—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] (s) M. J. DAVIS,
Notary Public in and for the County of Kern, State
of California.

State of California,
County of Los Angeles—ss.

On this 25th day of May, A. D. 1938, before me, Leila E. Crudele, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Emil Kluth and D. T. Staples, known to me to be the Vice President and Assistant Secretary, respectively, of the Pacific Western Oil Corporation, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] (s) LEILA A. CRUDELE,
Notary Public in and for said County and State.
My Commission Expires November 27, 1940. [52]

EXHIBIT No. 7

(Copy)

No.

LEASE

From

.....

.....

Lessor.

To

.....

.....

Lessee.

Recorded at Request of

.....

.....

At min. past M. in
Book of Official Records,
Page of the Records of
County, California.

.....

Recorder.

By

Deputy Recorder.

When recorded return to

Published by

Petroleum World

412 West Sixth St.

Los Angeles, Calif.

(Copyright 1935 by Palmer
Publications, Inc.)

Exhibit No. 7—(Continued)

OIL AND GAS LEASE

This Agreement, made and entered into this 21st day of May, 1938, by and between L. G. Helm and Etta Helm, his wife, party of the first part, herein styled "Lessor," and Signal Oil and Gas Company, a corporation, party of the second part, herein styled "Lessee."

Witnesseth: That for and in consideration of the sum of Ten Dollars, lawful money of the United States of America, to the Lessor paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessor has granted, leased, let and demised, and by these presents does grant, lease, let and demise unto the Lessee, its grantees, successors and assigns, the land and premises hereinafter described, with the sole and exclusive right to the Lessee to drill for, produce, extract and take oil, gas, asphaltum and other hydrocarbons (and water for its operations) from, and to store the same upon, said land during the term hereinafter provided, with the right of entry thereon at all times for said purposes, and to construct, use, maintain, erect, repair and replace thereon and to remove therefrom all pipe lines, telephone and telegraph lines, tanks, machinery, buildings and other structures which the Lessee may desire in carrying on its business and operations on said land, or ad-

Exhibit No. 7—(Continued)

joining or neighboring premises operated by Lessee, with the further right to the Lessee or any of its subsidiaries to erect, maintain, operate and remove a plant with all necessary appurtenances, for the extraction of gasoline from gas produced from said land and/or other premises in the vicinity of said land, including all rights necessary or convenient thereto, together with rights-of-way for passage over, upon and across, and ingress and egress to and from, said land, for any or all of the above mentioned purposes. The possession by the Lessee of said land shall be sole and exclusive, excepting only that the Lessor reserves the right to occupy said land or to lease the same for agricultural, horticultural, or grazing uses, which uses shall be carried on subject to, and with no interference with, the rights or operations of the Lessee hereunder. The land which is the subject of this lease is situated in the County of Kern, State of California, and is described as follows, to-wit:

The North half of the Southeast quarter (N $\frac{1}{2}$ of SE $\frac{1}{4}$) of Section Four (4), Township Twenty-five (25) South, Range Twenty-two (22) East, M.D.B.M., according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor-General, and contains 80 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof,

Exhibit No. 7—(Continued)

and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty on oil the equal one-eighth part of the proceeds of all oil produced, saved and sold from the leased premises, after making the customary deductions for temperature, water and b. s. at the posted available market price in the district in which the premises are located for oil of like gravity the day the oil is run into purchaser's pipe line or storage tank, and settlement shall be made by Lessee on or before the 25th day of each month for accrued royalties for the preceding calendar month. At Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, Lessee shall deliver into Lessor's tanks on the leased premises, or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's royalty oil, provided that Lessee may at any time purchase and take Lessor's royalty oil at said posted available market price. No royalty shall be due the Lessor for or on account of oil lost through evaporation, leakage or otherwise prior to the marketing of the same or delivery to Lessor if royalty oil is being taken in kind.

2. For all gas produced, saved and sold from said land by Lessee, the Lessee shall pay as royalty

Exhibit No. 7—(Continued)

the 1/8th part of the net proceeds from the sale of such gas, but nothing herein contained shall be deemed to obligate the Lessee to produce, save, sell or otherwise dispose of gas from said land. For the purpose of having gasoline extracted from gas produced from said land, the Lessee may transport, or cause to be transported, to a gasoline extraction plant located either on said land or on other lands, all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported and such meter readings, together with the results of content tests by recognized methods made at approximately regular intervals, at least once every month, shall furnish the basis for computation of the amounts of gasoline and residue gas to be credited to this lease. Gas used or consumed, or lost in the operations of any such plant, shall be free of charge, and Lessee shall not be held accountable to the Lessor for the same or for any royalty thereon. Lessee shall not be required to pay royalty for or on account of any gas used for repressuring any oil-bearing formation which is being produced from by a well or wells on the leased premises, even though such repressuring is done by injecting such gas into wells not situated on the leased premises. The Lessor shall be entitled to gas free of charge from any gas wells on the leased premises for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated

Exhibit No. 7—(Continued)

by Lessee, the taking and use of said gas to be at the Lessor's sole risk and expense at all times.

3. Any casinghead gasoline extracted from gas produced from said land shall, at the option of the Lessee, be returned to the oil produced therefrom and shall be treated as a part thereof; otherwise the Lessee shall pay to the Lessor as royalty for such extracted gasoline the equal one-eighth part of the net proceeds of the sale thereof after deducting transportation and extraction costs, or of the Lessee's portion thereof if extracted on a royalty basis. If there shall be no available market and/or no public or open market price for the gasoline at the place of extraction, then the Lessee shall be entitled to sell and/or dispose of all the gasoline for the best price and on the best terms obtainable, but in no case shall settlement of royalty be at a less price than that obtained by the Lessee for its portion of the gasoline.

4. The Lessee shall not be required to account to the Lessor for, or pay royalty on, oil, gas or water produced by the Lessee from said land and used by it in its operations hereunder, but it may use such oil, gas and water free of charge.

5. It is expressly understood and agreed that the considerations expressed and/or referred to herein include all rental for the first ten years of the term hereof. Commencing with the eleventh year of the term hereof, if the Lessee has not theretofore commenced drilling operations on said land or termi-

Exhibit No. 7—(Continued)

nated this lease as herein provided, the Lessee shall pay or tender to the Lessor in advance, as rental, the [53] sum of Twenty-five (\$25.00) Dollars per acre for so much of said land as may then still be held under this lease, until drilling operations are commenced or this lease terminated as herein provided.

6. The Lessee agrees to commence drilling operations on said land within 20 years from the date hereof (unless the Lessee has sooner commenced the drilling of an offset well on said land as herein provided) and to prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; or it may at any time within said period terminate this lease and surrender said land as hereinafter provided. No implied covenant shall be read into this lease requiring the Lessee to drill or to continue drilling on said land, or fixing the measure of diligence therefor. The Lessee may elect not to commence or prosecute the drilling of a well on said land as above provided, and thereupon this lease shall terminate.

7. If the Lessee shall elect to drill on said land, as aforesaid, and oil or gas shall not be obtained in paying quantities in the first well drilled, the Lessee shall, within six (6) months after the completion or abandonment of the first well, commence on said land drilling operations for a second well, and shall pro-

Exhibit No. 7—(Continued)

secute the same with reasonable diligence until oil or gas is found in paying quantities, or until the well is drilled to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; and the Lessee shall in like manner continue its operations until oil or gas in paying quantities is found, but subject always to the terms and conditions hereof and with the rights and privileges to the Lessee herein given.

8. If oil or gas is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee, subject to the provisions hereof and to the suspension privileges hereinafter set forth, shall continue to drill additional wells on said land as rapidly as one string of tools working with reasonable diligence can complete the same, until there shall have been completed on said land as many wells as shall equal the total acreage then held under this lease divided by twenty; whereupon the Lessee shall hold all of the land free of further drilling obligations; provided, that the Lessee may defer the commencement of drilling operations for the second or any subsequent well for a period not to exceed six (6) months from the date of completion of the well last preceding it; provided further, if oil is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee may further defer the commencement of drilling operations for the second or any subsequent well on said land for a period not to exceed two (2) years from and after

Exhibit No. 7—(Continued)

six (6) months from the date of completion of the well last preceding it, by paying or tendering to the Lessor as rental, monthly in advance commencing with the expiration of such six (6) months' period, a sum equal to Five (\$5.00) Dollars for each acre of land then subject to this lease, until drilling is resumed or drilling obligations are terminated as herein provided. The Lessee shall be entitled to drill as many additional wells on said land as it desires. Except as herein otherwise provided, it is agreed that the Lessee shall drill such wells and operate each completed well with reasonable diligence and in accordance with good oil field practice so long as such wells shall produce oil in paying quantities while this lease is in force as to the portion of said land on which such well or wells are situated; but in conformity with any reasonable conservation or curtailment program affecting the drilling of wells or the production of oil and/or gas from said land, which the Lessee may either voluntarily or by order of any authorized governmental agency subscribe to or be subject to. Drilling and producing operations hereunder may also be suspended while the price offered generally to producers in the same vicinity for oil of the quality produced from said land is seventy-five (75) cents or less per barrel at the well, or when there is no available market for the same at the well.

8-a. If oil is found in paying quantities at a depth greater than 10,000 feet from the surface of

Exhibit No. 7—(Continued)

said land, then in that event, the number of wells to be drilled on said leased premises shall be two (2).

9. If the Lessee shall complete a well or wells on said land which shall fail to produce oil in paying quantities but which produces gas in paying quantities, the Lessee, shall either sell so much of said gas as it may be able to find a market for, and pay the Lessor the royalty provided herein on the volume of gas so sold, or Lessee may, if it so elects, suspend the operation of such gas well or wells from time to time and during the period of such suspension pay or tender to the Lessor as rental monthly in advance, a sum equal to One Dollar (\$1.00) per acre for so much of the acreage then held under this lease, such rental to continue until producing operations are resumed and royalties are paid to the Lessor for gas sold as above provided. It is further understood and agreed that if the Lessee shall complete a well which shall fail to produce oil in paying quantities, but which produces gas in paying quantities, it shall not be obliged to conduct any further drilling operations on said land (except the drilling of offset wells as hereinafter provided) unless and until, in its judgment, the drilling of such additional wells under the provision of this lease is warranted in view of existing or anticipated market requirements.

10. If it should hereafter appear that the Lessor at the time of making this lease owns a less interest

Exhibit No. 7—(Continued)

in the leased land than the fee simple estate or the entire interest in the oil and gas under said land, then the rentals and royalties accruing hereunder shall be paid to the Lessor in the proportion which his interest bears to the entire fee simple estate or to the entire estate in said oil and gas.

11. There is hereby expressly reserved to the Lessor, and as well to the Lessee, the right and privilege to convey, transfer or assign in whole or in part its interest in this lease or in the leased premises or in the oil and/or gas therein or produced therefrom, but if the Lessor shall sell or transfer any part or parts of the leased premises or any interest in the oil and/or gas under any part or parts thereof the Lessee's drilling obligations shall not thereby be altered, increased or enlarged, but the Lessee may continue to operate the leased premises and pay and settle rents and royalties as an entirety.

12. In the event that a well is drilled upon adjoining property within 250 feet of the exterior limits of any land at the time embraced in this lease and oil or gas is produced therefrom in paying quantities, and the drilling requirements as specified in paragraph 8 hereof are not fully complied with, and the owner of such well shall operate the same and market the oil or gas produced therefrom, then the lessee agrees to offset such well by the commencement of drilling operations within ninety days after it is ascertained that the production of oil or gas from such well is in paying quantities

Exhibit No. 7—(Continued)

that the operator thereof is then producing and marketing oil or gas therefrom. For the purpose of satisfying obligations hereunder such offset well or wells shall be considered as other wells required to be drilled hereunder.

13. The obligations of the Lessee hereunder shall be suspended while the Lessee is prevented from complying therewith, in whole or in part, by strikes, lockouts, action of the elements, accidents, rules and regulations of any Federal, State, Municipal or other governmental agency, or other matters or conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not.

14. Water produced by the Lessee but not used by it in its operations hereunder, may be used by the Lessor for surface operations on said land.

15. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first Monday of March in each year, and seven-eighths of the taxes levied and assessed against the petroleum mineral rights. Lessor agrees to pay all taxes levied and assessed against the land as such and one-eighths of the taxes levied and assessed against the petroleum mineral rights. In the event the State, United States or any municipality levies a severance or gross production tax on the oil produced hereunder, then and in that event the Lessee shall pay seven-eighths of said tax and Lessor shall pay one-eighths of said tax.

Exhibit No. 7—(Continued)

16. The Lessee agrees not to drill any well on said land within one hundred (100) feet of the now existing buildings thereon without the written consent of the Lessor. The Lessee agrees to pay all damages directly occasioned by its operations to crops on said land.

17. The Lessor may at all reasonable times examine said land, the work done and in progress thereon, and the production therefrom, and may inspect the books kept by the Lessee in relation to the production from said land, to ascertain the production and the amount saved and sold therefrom. The Lessee agrees, on written request, to furnish to the Lessor copies of logs of all wells drilled by the Lessee on said land. [54]

18. All the labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of the Lessee, and the Lessor shall not be chargeable with, or liable for, any part thereof; and the Lessee shall protect said land against liens of every character arising from its operations thereon.

19. Upon the written request of the Lessor, the Lessee agrees to lay all pipe lines which it constructs through cultivated fields, below plow depth, and upon similar request agrees to fence all sump holes or other excavations to safeguard livestock on said land.

20. The Lessee shall have the right at any time to remove from said land all machinery, rigs, pip-

Exhibit No. 7—(Continued)

ing, casing, pumping stations and other property and improvements belonging to or furnished by the Lessee, provided that such removal shall be completed within a reasonable time after the termination of this lease. Lessee agrees after termination of this lease to fill all sump holes and other excavations made by it.

21. If royalty oil is payable in cash, Lessee may deduct therefrom a proportionate part of the cost of treating unmerchantable oil produced from said premises to render same merchantable. In the event such oil is not treated on the leased premises, Lessor's cash royalty shall also bear a corresponding proportionate part of the cost of transporting the oil to the treating plant. Nothing herein contained shall be construed as obligating Lessee to treat oil produced from the herein described premises. If Lessor shall elect to receive royalty oil in kind, such royalty oil shall be of the same quality as that removed from the leased premises for Lessee's own account, and if Lessee's own oil shall be treated before such removal, Lessor's oil will be treated therewith before delivery to Lessor and Lessor in such event will pay a proportionate part of the cost of treatment.

22. Upon violation of any of the terms or conditions of this lease by the Lessee and the failure to begin to remedy the same within 90 days after written notice from the Lessor so to do, then, at

Exhibit No. 7—(Continued)

the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting 20 acres surrounding each well producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such default, and upon payment of the sum of Ten Dollars (\$10.00) to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

23. All royalties and rents payable in money hereunder may be paid to the Lessor by mailing or delivering a check therefor to Bank of America N. T. & S. A. Bank at Bakersfield, Calif., its successors and assigns, herein designated by the Lessor as depositary, the Lessor hereby granting to said depositary full power and authority on behalf of the Lessor, his heirs, executors, administrators, successors and assigns, to collect and receipt for all sums of money due and payable from the Lessee to the Lessor hereunder. No change in the ownership of the land or minerals covered by this lease, and no assignment of rents or royalties shall be bind-

Exhibit No. 7—(Continued)

ing on the Lessee until it has been furnished with satisfactory written evidence thereof.

24. Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described land; and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rentals accruing hereunder.

25. If and when any oil produced from the demised premises shall for any reason be unmarketable at the well at the price mentioned in paragraph 8 hereof, the Lessor agrees in such case to take and receive his royalty in kind, and should he fail or refuse so to do, then the Lessee may sell the same at the best price obtainable, but not less than the price which the Lessee may be receiving for its own oil of the same quality.

26. The words "drilling operations" as used in this lease shall be held to mean any work or actual operations undertaken or commenced in good faith for the purpose of carrying out any of the rights, privileges or duties of the Lessee under this lease, followed diligently and in due course by the construction of a derrick and other necessary structures for the drilling of an oil or gas well, and by the actual operation of drilling in the ground.

Exhibit No. 7—(Continued)

27. On the expiration or sooner termination of this lease, Lessee shall quietly and peaceably surrender possession of the premises to Lessor and deliver to him a good and sufficient quitclaim deed, and so far as practicable cover all sump holes and excavations made by Lessee. Before removing the casing from any abandoned well Lessee shall notify Lessor of the intention so to do, and if Lessor within five (5) days thereafter shall inform Lessee in writing of Lessor's desire to convert such well into a water well, and for that purpose to retain and purchase casing therein, Lessee will leave therein such amount of casing as Lessor may require for said purpose, provided such procedure is lawful and will not violate any rule or order of any official, commission or authority then having jurisdiction in such matters, and provided further that Lessor pay to Lessee fifty (50) per cent of the original cost of the casing on the ground.

28. Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage covered thereby, with the privilege of retaining twenty (20) acres surrounding each producing or drilling well, and thereupon Lessee shall be released from all further obligations and duties as to the area so quitclaimed, and all rentals and drilling requirements shall be reduced pro rata. All lands quitclaimed shall remain subject to the easements and rights-of-way hereinabove provided for. Except as so provided, full right to the land so quitclaimed shall

Exhibit No. 7—(Continued)

revest in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the land quitclaimed within three hundred (300) feet of any producing or drilling well retained by Lessee.

29. If this lease shall be assigned to a particular part or as to particular parts of the leased premises, such division or severance of the lease shall constitute and create separate and distinct holdings under the lease of and according to the several portions of the leased premises as thus divided, and the holder or owner of each such portion of the leased premises shall be required to comply with and perform the Lessee's obligations under this lease for, and only to the extent of, his portion of the leased area, and performance thereof shall be sufficient to protect and validate this lease as to his portion of the leased area notwithstanding the obligations of the lease may not be fully performed as to another part or portion thereof.

30. This lease and all its terms, conditions and stipulations shall extend to and be binding upon the heirs, executors, administrators, grantees, successors and assigns of the parties hereto.

31. Irrespective of anything to the contrary herein contained it is expressly understood and agreed by and between Lessor and Lessee that in the event drilling operations on the first well are not commenced within the time and/or times herein expressed that said lease shall terminate without

Exhibit No. 7—(Continued)

liability of any kind and/or character on the part of Lessee.

32. It is mutually agreed and understood that the terms, conditions, covenants and warranties herein expressed constitute the complete agreement of the parties hereto and that there are no terms, conditions, covenants and/or warranties either expressed or implied other than those in this said Indenture of Lease contained.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the date first hereinabove written.

L. G. HELM

ETTA HELM

Lessor

SIGNAL OIL AND GAS
COMPANY

[Seal]

R. H. GREEN, V. P.

F. R. BACON, Asst Sect.

Lessee

Witness:

.....
.....

State of California,
County of Los Angeles—ss.

On This 27th day of May, A. D., 1938 before me, Lona C. Carr, a Notary Public in and for the said County and State, personally appeared R. H. Green, known to me to be the Vice President, and

Exhibit No. 7—(Continued)

F. R. Bacon, known to me to be the Assistant Secretary Signal Oil and Gas Company the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

LONA C. CARR

Notary Public in and for said
County and State. [55]

State of California,
County of Kern—ss.

On this 23rd day of May, in the year nineteen hundred and thirty-eight, before me, M. J. Davis, a Notary Public in and for the County of Kern, State of California, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

M. J. DAVIS

Notary Public in and for the County of Kern, State
of California.

Exhibit No. 7—(Continued)

State of California,

County of..... —ss.

On this day of, A. D. 19....
before me,, a Notary Public in and for
the County of, State of California,
residing therein, duly commissioned and sworn, per-
sonally appeared known
to me to be the of the
the that executed the within instru-
ment, known to me to be the persons who executed
the within instrument on behalf of the
therein named, and acknowledged to me that such
..... executed the same.

In Witness Whereof, I have hereunto set my
hand and affixed my official seal the day and year
in this certificate first above written.

.....
Notary Public in and for said
County and State. [56]

EXHIBIT No. 8

(Copy)

No.

OIL AND GAS LEASE

From

.....
.....

Lessor.

To

Union Oil Company

of California

Lessee.

Recorded at Request of

.....

At.....min. past.....M. in

Book.....of Official Rec-

ords, Pageof the

Records of.....

County.

.....

Recorder.

By

Deputy Recorder.

When recorded return to

Land Department

Union Oil Co. of

California

1117 Union Oil Building

Los Angeles, Calif.

Exhibit No. 8—(Continued)

OIL AND GAS LEASE

This Lease and Agreement, made and entered into this 24th day of May, 1938, by and between L. G. Helm and Etta Helm, his wife, hereinafter called Lessor, (whether one or more), and Union Oil Company of California, a California corporation, hereinafter called Lessee:

Witnesseth: That Lessor, for and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of Lessee to be kept, and performed, by these presents does grant, demise, lease and let unto said Lessee exclusively, for the purpose of exploring, mining, drilling and operating for oil, gas and other hydrocarbon substances, and taking, treating, storing, removing and disposing of same, with the right for such purposes to the free use of oil, gas and water from said land, but not from Lessor's water wells, and the right to place and maintain on said premises tanks, houses for employees, oil and gas treating plants and all other structures and works (excepting refinery) as may be necessary or convenient in its operations, together with rights of way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing, either during or after the term hereof, any and all improvements placed or erected by Lessee,

Exhibit No. 8—(Continued)

including casing in wells, on that certain tract of land situated in the County of Kern, State of California, described as follows, to-wit:

The South half of the Southeast quarter (S $\frac{1}{2}$ of SE $\frac{1}{4}$) of Section 4, Township 25 South, Range 22 East of the M. D. B. & M.,

and containing 80 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom in quantities deemed paying by Lessee.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty the equal one-eighth ($\frac{1}{8}$) part of the value of all oil removed from the leased premises, after making the customary deduction for temperature, water and b. s., at the posted market price of the major oil companies in the district in which the premises are located for oil of like gravity the day the oil is run into pipe line or storage tanks, and in this event, settlement shall be made by Lessee on or before the 20th day of each month for accrued royalty for the preceding calendar month; or, at Lessor's option, exercised not more than once in any one calendar year, upon sixty (60) days' previous written notice, deliver into Lessor's tanks on the leased premises

Exhibit No. 8—(Continued)

or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's one-eighth ($\frac{1}{8}$) part of said oil. Provided that in determining the gravity, quality and quantity of said oil, the methods and practices which are usual and customary among major oil purchasing companies shall be followed, and the customary temperature corrections and deductions for water and other foreign substances shall be made; provided that in event Lessee shall treat its own portion of said oil for the purpose of making the same marketable, it shall also treat said royalty oil and Lessor shall pay a reasonable price for treating.

2. For gas not used in its operations hereunder and/or not treated as provided in Section 3, Lessee shall pay Lessor a royalty of one-eighth ($\frac{1}{8}$) of the net proceeds derived from the sale thereof, or of the value at the field market price of same when used by Lessee in other operations, and in this event settlement shall be made by Lessee on or before the 20th day of each calendar month for gas sold or so used in other operations during the preceding month, but nothing in this agreement contained shall require Lessee to save or market gas from said lands unless there shall be a surplus above lease requirements and a market at the well for same.

3. Lessee shall have the right to treat or cause to be treated all or any portion of the gas produced from said premises, for the purpose of extracting the gasoline or other content thereof. In the event

Exhibit No. 8—(Continued)

that any such gas shall be so treated by Lessee itself, Lessor shall receive a royalty of one-eighth ($\frac{1}{8}$) of one-third ($\frac{1}{3}$) of the value of the marketable casinghead gasoline or other content extracted from such gas, as determined by the records of Lessee. In the event that any such gas shall be so treated by a third party, and Lessee shall have the right to contract for the treatment of such gas, in its discretion, then Lessor shall receive a royalty of one-eighth ($\frac{1}{8}$) of the value of the royalty paid to Lessee by such third party for the privilege of treating such gas. For the purpose of accounting hereunder, the value of Lessor's royalty shall be based upon the wholesale price freely and currently offered and paid by Lessee for gasoline or other content of the same quality, in the same quantities and under the same terms of delivery in the field where the demised land is located, at the time the gasoline or other content herein referred to is run from treating plant. Payment shall be made by Lessee on or before the 20th day of each month for Lessor's royalty hereunder on all such gasoline or other content produced and delivered during the preceding calendar month. Lessor shall be entitled to one-eighth ($\frac{1}{8}$) of the net proceeds received by Lessee from the sale of any dry gas remaining after the same shall have been treated and not used in its operations hereunder. It is understood that there may be commingled with said gas so to be treated gas produced from other properties.

Exhibit No. 8—(Continued)

and that the apportionment of the gasoline or other content extracted will be based upon the respective quantities of gas metered and respective qualities tested, in such manner as may seem proper to Lessee, and that the apportionment of the dry gas residuum will be based upon the customary practice in the industry.

4. This lease shall terminate as to all rights and obligations contained hereunder unless Lessee shall on or before Twenty (20) years from the date hereof commence operations for the drilling of a well for oil or gas on the above described land, and prosecute the drilling thereof with due diligence and dispatch until a depth of Nine Thousand (9,000) feet has been reached, unless oil or gas is found in paying quantities at a lesser depth, or unless formations are encountered at a lesser depth which would indicate to Lessee's geologist that further drilling would be unsuccessful, or unless mechanical difficulties are encountered in the prosecution of the drilling of said well; in the event such formation or mechanical difficulties are encountered, Lessee may abandon said well, but this lease shall continue in full force and effect provided operations for the drilling of a new well is commenced within ninety (90) days from the abandonment of the first well and thereafter drilled diligently as hereinabove provided. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, Lessee shall drill a dry hole on this land, this

Exhibit No. 8—(Continued)

lease shall terminate unless operations for the drilling of a new well shall be commenced within ninety (90) days from the date of the abandonment of said dry hole, and thereafter be drilled diligently by Lessee. [57]

5. If operations for the drilling of a well for oil or gas be not commenced on said land on or before Ten (10) years from this date, this lease shall terminate as to both parties, unless Lessee shall on or before Ten (10) years from this date pay or tender to Lessor or for Lessor's credit in the Anglo California National Bank at Bakersfield, California, or its successors, the sum of Thirty Dollars (\$30.00) per acre, which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of Ten (10) years. All payments or tenders may be made by check or draft of Lessee mailed or delivered on or before the rental paying date. It is the intent hereof that rentals shall not be paid except for the purpose of deferring the commencement of drilling operations as herein provided.

6. Within ninety (90) days after discovery of oil in paying quantities in any of the wells herein provided for on the above described premises, Lessee agrees to commence operations for the drilling of another well, and thereafter continuously operate at least one (1) string of tools, allowing ninety (90) days between the completion or abandonment of one well and the commencement of the next succeeding well until one (1) well has been

Exhibit No. 8—(Continued)

drilled to each forty (40) acres, or a total of two (2) wells; provided, however, that if and when developments on said land shall indicate that oil cannot be produced therefrom in paying quantities but that gas can be produced in paying quantities, the obligation of Lessee hereunder shall be to drill only one (1) well to each Eighty (80) acres. The number of oil or gas wells to be an average regardless of where drilled. Nothing herein shall be considered to limit the number of wells which Lessee may drill should it so elect in excess of the number hereinabove specified.

7. All rights hereby granted to Lessee (including the right to drill additional wells) shall continue after expiration of said twenty-year term of this lease as to the premises, or portion thereof then subject to this lease, as long as oil or gas or other hydrocarbon substance is produced therefrom in quantities deemed paying by Lessee, except as to such rights as may have been quitclaimed by Lessee or may have been terminated under the provisions of Section 18, hereof.

8. In the event of discovery of oil in any well on adjacent properties within three hundred thirty (330) feet of the boundary line of the above described premises, and the same produces oil in paying quantities for thirty (30) consecutive days and a well offsetting same is not already drilled, or being drilled, then in that event Lessee shall within sixty (60) days after completion of said well to be offset, commence operations for the drilling of a well to offset such

Exhibit No. 8—(Continued)

producing well and drill the same diligently to the strata from which oil is being produced on the adjacent property. Offset wells shall be located within three hundred (300) feet of the boundary line separating the properties, and within three hundred (300) feet of a line drawn from the well to be offset across said boundary line at right angles. "Paying quantities" as used in this Section shall be considered as such production as will be sufficient to reasonably assure the lessee a profit over and above the cost of drilling and producing such an offset well.

9. After the drilling of the first well herein required, there shall be no obligation upon the part of Lessee to drill, pump or operate said premises, except offset wells when wells offset are being operated, so long as the price of oil of the quality and gravity produced on said property shall be Seventy-five (75) cents or less per barrel at the well.

10. Notwithstanding anything in this lease contained to the contrary, it is expressly understood and agreed that the obligations imposed upon Lessee may be suspended so long as Lessee is prevented from performing such obligations by the elements, accidents, strikes, lockouts, riots, delays in transportation, inability to secure materials in the open market or other causes beyond the reasonable control of Lessee, or compliance by Lessee with applicable Federal or State regulations or orders with respect to the time, order, location and/or manner of drilling wells, or the depth to which

Exhibit No. 8—(Continued)

wells may be drilled, or the operation of wells, or with proration or curtailment regulations of authorities constituted by law, or by voluntary agreement of producers representing a majority of the production in the district in which said wells are located.

11. Lessee shall carry on all operations in a careful, workmanlike manner and in accordance with the laws of the State of California. Lessee shall keep full records of its operations in the drilling for and production of oil and of the production and sale of gas and casinghead gasoline from said property, and such records and operations of said property shall be open at all reasonable times to the inspection of Lessor or Lessor's agent, and Lessee shall furnish to Lessor or Lessor's agent a monthly statement of the production from said premises for the preceding calendar month, which statement shall be made between the parties on or about the 20th day of each calendar month for the preceding calendar month, and shall be deemed an account stated unless specific objection be made thereto within ninety (90) days after receipt thereof by Lessor or Lessor's agent. Whenever in writing requested by Lessor, Lessee shall furnish to Lessor a copy of the logs of all wells completed and tested on said property.

Lessor will from time to time fully inspect and become familiar with operations hereunder and the ordinary and usual methods employed by Lessee

Exhibit No. 8—(Continued)

in gauging and testing the petroleum oil produced from the demised land and ascertaining and determining the amount, cuts for water and b. s., deductions for temperature, and the gravity of said oil, and Lessee shall furnish Lessor or Lessor's agent full opportunity to make all inspections desired by Lessor.

11a. The Lessee agrees, subject to the provisions hereof, to operate each completed oil well with reasonable diligence and in accordance with good oil field practice so long as such well shall produce oil in quantities deemed paying quantities by the Lessee while this lease is in force as to the portion of said land on which such well is situated.

12. Lessor shall have the right to the use of the surface of said land for agricultural and grazing purposes to the extent which will not interfere with the proper operation of the lease for oil or gas. Lessee agrees to conduct its operations so as to interfere as little as is consistent with the economical operation of the property for oil or gas with use of the land for agricultural or grazing purposes. Whenever required by Lessor in writing, Lessee shall fence all sump holes or other openings to safeguard live stock on said land.

Lessee may, either before or after the commencement of drilling operations hereunder, enter upon the herein demised land at any time for the purpose of conducting geological and geophysical work and the drilling of holes for such geological and geophysical information.

Exhibit No. 8—(Continued)

13. Lessee shall pay the surface owner or surface tenant for all damage to crops and trees existing at time of commencement of drilling hereunder, to live stock, fences, pipe lines, canals, buildings and other improvements caused by its operations under this lease. In event the parties hereto are unable to agree on the amount of such damage, then the same shall be left to arbitration conducted in accordance with the arbitration laws of the State.

14. Lessee agrees that no well shall be drilled nearer than one hundred fifty (150) feet of any dwelling house now on said premises without the written consent of Lessor. When requested by Lessor, Lessee shall bury its pipe lines below plow depth.

15. Lessee may at any time and from time to time, either before or after discovery of oil on the demised premises, quitclaim this lease in its entirety, or as to part of the acreage covered hereby, and thereupon Lessee shall be released from all further obligations as to the land so quitclaimed, and all rentals and drilling obligations as set forth in this lease shall be reduced pro rata according to the acreage so quitclaimed by Lessee; it being particularly understood, however, that all lands so quitclaimed shall remain subject to—and Lessee shall have the right to use and enjoy—such rights of way and easements as may be necessary or convenient for Lessee's operations on the land retained by it. Except as herein provided, full right to such quit-

Exhibit No. 8—(Continued)

claimed land shall revert in Lessor free and clear of all claims of Lessee except that Lessor and Lessor's successors or assigns shall not drill any well on the said land within six hundred (600) feet of any producing well retained by Lessee, or well then being drilled which subsequently is completed as a producing well.

16. Lessee shall pay all taxes levied on its improvements and personal property and all taxes levied on its oil stored on the leased premises. Lessor shall pay all taxes and assessments on the surface value of the land and on all other improvements and personal property thereon, also all taxes levied on any oil which Lessor may have stored on the said leased premises. All increase in the taxes on the demised premises or, if Lessee shall have quit-claimed a portion of the demised premises, on such part of the demised premises as is retained by Lessee, caused by or resulting from the discovery or production of oil, gas or other substances herein mentioned thereon and therefrom, whether assessed upon said land or as mineral rights or otherwise, and charges [58] and/or taxes of whatsoever kind levied or collected by reason of the production, sale or removal of oil, gas or other substances from the demised premises shall be borne by the parties hereto in the proportion of seven-eighths ($7/8$) by Lessee, and one-eighth ($1/8$) by Lessor. In the event that Lessor shall fail to pay any such taxes, assessments or charges so required to be paid by

Exhibit No. 8—(Continued)

Lessor, Lessee may at its option pay the same; or in the event any of the taxes or assessments to be paid by Lessor are assessed against and/or paid by Lessee, then in either of such events Lessee may reimburse itself for such taxes or assessments so paid by it from any royalties or rentals accruing hereunder.

17. On the expiration of this lease, or its sooner termination, Lessee shall quietly and peacefully surrender possession of the premises to Lessor and deliver to Lessor a good and sufficient quitclaim deed, and shall so far as practicable cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, should Lessor desire to retain the same, Lessor may notify Lessee to that effect and thereupon Lessee shall leave such casing in the well as Lessor may require, and Lessor shall pay to Lessee fifty per cent (50%) of the original cost of such casing on the ground.

18. In case of default in performance by Lessee of any of its obligations under this lease, and the failure to remedy or to begin in good faith to remedy the same within sixty (60) days after written notice from Lessor so to do, specifying the particulars in which it is claimed Lessee is in default, then at the option of Lessor, all rights of Lessee under this lease shall forthwith cease and terminate save and except that Lessee shall have the right to retain all wells then producing or in the course of drilling, as to which Lessee is not in de-

Exhibit No. 8—(Continued)

fault, with full right to operate, retain, produce, redrill, deepen and properly maintain all such wells subject to all provisions of this lease, and to use as much of said land as may be necessary or convenient for Lessee's operations of such wells as long as said wells respectively shall produce oil or gas in quantities deemed paying by Lessee, and Lessor shall not drill or permit to be drilled any well on said premises within Six Hundred (600) feet of any well so retained by Lessee. Forfeiture of rights as in this section provided shall be the exclusive remedy of Lessor for breach of obligations, or any thereof by Lessee excepting the obligation of Lessee to make full payment of royalties as in this lease provided. It is understood and agreed that the right of Lessor to declare forfeiture and termination of this lease for failure to commence operations for the drilling of the first well as provided in Sections 4 and 5 hereof, shall be absolute and no period of grace shall be granted Lessee.

19. All work done on the land by Lessee shall be at Lessee's sole cost and expense, and Lessee agrees to protect said land and Lessor from claims of contractors, laborers, or materialmen, and Lessor may post and keep posted on said lands such notices as Lessor may desire to protect said lands against liens.

20. Lessor hereby agrees to defend the title to the land herein described and agrees that Lessee, at its option, may pay and discharge any taxes,

Exhibit No. 8—(Continued)

mortgages or other liens existing, levied or assessed on or against the above described lands, and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

21. If the estate of either party hereto is assigned, (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to its successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on Lessee until Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment. Provided, however, that all payments or royalties due Lessor hereunder shall be payable as a whole to Lessor or Lessor's agent, (as provided in Section 23 hereof), and Lessee shall not be responsible for the division of the same in the event of any change of ownership in Lessor's interest hereunder.

22. "Drilling operations," or "Operations for the drilling of a well," as used in this lease is defined to mean the placing of material upon the demised premises for the construction of a derrick for the drilling of an oil or gas well, followed diligently by the construction of such derrick and by actual drilling in the ground.

23. All money payments due Lessor hereunder

Exhibit No. 8—(Continued)

shall be made for the account of and credit of Lessor to Anglo California National Bank at Bakersfield, California, or to such other person, bank or trust company in California as Lessor may designate to receive same for Lessor. If the interest of Lessor or a portion thereof is transferred and becomes vested in two or more parties, then such parties or a majority thereof in interest shall designate to Lessee in writing, accompanied by the acceptance of the payee, a bank or trust company in California to receive and distribute all such payments, and the Lessee upon tender of payment to same, shall be relieved from all obligations or responsibilities as to the proper distribution of the same. The action of the holders of the majority in ownership of Lessor's interest hereunder in instructing Lessee as to the bank or trust company to which payments are to be tendered or made, shall be binding upon all parties and any such majority is hereby authorized to designate or change the designated payee and to make the necessary arrangements with the payee for the distribution of funds. Lessee is hereby authorized to withhold the making of any payments until the provisions of this section are complied with.

24. Any notice or statement herein required or permitted to be given or furnished by one party to the other shall be in writing. Delivery of such written notice or statement to Lessor shall be made by depositing in the United States registered mail such written notice or statement addressed to Les-

Exhibit No. 8—(Continued)

sor at 1413 17th Street, Bakersfield, California, and delivery of such written notice or statement to Lessee shall be made by depositing in the United States registered mail such written notice or statement addressed to Lessee at Union Oil Building, Los Angeles, California. Either party hereto may by written notice change its address to any other location.

25. This lease and agreement shall be obligatory upon and shall inure to the benefit of the assigns and successors in interest of the respective parties hereto.

26. The entire agreement between the parties is embodied in this lease, and no covenant or agreement other than those set forth in this lease shall be obligatory upon either of the parties hereto except insofar as this lease may subsequently be modified by written agreement of the parties.

In Witness Whereof, the parties hereto have caused this lease to be executed the day and year first above written.

L. G. HELM

ETTA HELM

Lessor

UNION OIL COMPANY OF
CALIFORNIA

Lessee

By W. W. ORCUTT

Vice President

By W. R. EDWARDS

Secretary, [59]

Exhibit No. 8—(Continued)

General Form

State of California,
County of Kern—ss.

On this 25th day of May, A. D. 1938, before me, M. J. Davis, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

M. J. DAVIS,

Notary Public in and for said County and State.

(2nd General Form Verification and Corporation Form Verification not filled in.)

State of California,
County of Los Angeles—ss.

On this 24th day of May, A. D. 1938, before me, Holt R. Gregory, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. W. Orcutt, known to me to be the Vice President, and W. R. Edwards, known to me to be the Secretary of Union Oil Company of California the Corporation that executed the within Instrument, known to

Exhibit No. 8—(Continued)

me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

HOLT R. GREGORY,

Notary Public in and for said County and State.

My Commission Expires August 14, 1941. [60]

EXHIBIT No. 9

(Copy)

No.

OIL AND GAS

LEASE

from

.....

.....

Lessor,

To

UNION OIL COMPANY

OF CALIFORNIA

Lessee.

Recorded at Request of

.....

.....

At.....min. past.....M. in
Book.....of Official Records, Page
.....of the Records of.....
County.

.....

Recorder.

By

Deputy Recorder.

When recorded return to

LAND DEPARTMENT

UNION OIL CO. OF CALIFORNIA

1117 Union Oil Building

Los Angeles, Calif.

Exhibit No. 9—(Continued)

OIL AND GAS LEASE

This Lease and Agreement, made and entered into this 24th day of May, 1938, by and between L. G. Helm and Etta Helm, his wife, hereinafter called Lessor, (whether one or more), and Union Oil Company of California, a California corporation, hereinafter called Lessee;

Witnesseth: That Lessor, for and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of Lessee to be kept and performed, by these presents does grant, demise, lease and let unto said Lessee exclusively, for the purpose of exploring, mining, drilling and operating for oil, gas and other hydrocarbon substances, and taking, treating, storing, removing and disposing of same, with the right for such purposes to the free use of oil, gas and water from said land, but not from Lessor's water wells, and the right to place and maintain on said premises tanks, houses for employees, oil and gas treating plants and all other structures and works (excepting refinery) as may be necessary or convenient in its operations, together with rights of way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing, either during or after the term hereof, any and all improvements placed or erected by Lessee, including

Exhibit No. 9—(Continued)

casing in wells, on that certain tract of land situated in the County of Kings, State of California, described as follows, to-wit:

The South half of the Northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$) of Section 32, the West half of the Southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of Section 33; the West half of the Southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of Section 34; all in Township 26 South, Range 22 East of the M. D. B. & M.,

and containing 240 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom in quantities deemed paying by Lessee.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty the equal one-eighth ($1/8$) part of the value of all oil removed from the leased premises, after making the customary deduction for temperature, water and b.s., at the posted market price of the major oil companies in the district in which the premises are located for oil of like gravity the day the oil is run into pipe line or storage tanks, and in this event, settlement shall be made by Lessee on or before the 20th day of each month for accrued royalty for the preceding calendar month; or, at Lessor's op-

Exhibit No. 9—(Continued)

tion, exercised not more than once in any one calendar year, upon sixty (60) days' previous written notice, deliver into Lessor's tanks on the leased premises or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's one-eighth ($1/8$) part of said oil. Provided that in determining the gravity, quality and quantity of said oil, the methods and practices which are usual and customary among major oil purchasing companies shall be followed, and the customary temperature corrections and deductions for water and other foreign substances shall be made; provided that in event Lessee shall treat its own portion of said oil for the purpose of making the same marketable, it shall also treat said royalty oil and Lessor shall pay a reasonable price for treating.

2. For gas not used in its operations hereunder and/or not treated as provided in Section 3, Lessee shall pay Lessor a royalty of one-eighth ($1/8$) of the net proceeds derived from the sale thereof, or of the value at the field market price of same when used by Lessee in other operations, and in this event settlement shall be made by Lessee on or before the 20th day of each calendar month for gas sold or so used in other operations during the preceding month, but nothing in this agreement contained shall require Lessee to save or market gas from said lands, unless there shall be a surplus above lease requirements and a market at the well for same.

Exhibit No. 9—(Continued)

3. Lessee shall have the right to treat or cause to be treated all or any portion of the gas produced from said premises, for the purpose of extracting the gasoline or other content thereof. In the event that any such gas shall be so treated by Lessee itself, Lessor shall receive a royalty of one-eighth ($1/8$) of one-third ($1/3$) of the value of the marketable casinghead gasoline or other content extracted from such gas, as determined by the records of Lessee. In the event that any such gas shall be so treated by a third party, and Lessee shall have the right to contract for the treatment of such gas, in its discretion, then Lessor shall receive a royalty of one-eighth ($1/8$) of the value of the royalty paid to Lessee by such third party for the privilege of treating such gas. For the purpose of accounting hereunder, the value of Lessor's royalty shall be based upon the wholesale price freely and currently offered and paid by Lessee for gasoline or other content of the same quality, in the same quantities and under the same terms of delivery in the field where the demised land is located, at the time the gasoline or other content herein referred to is run from treating plant. Payment shall be made by Lessee on or before the 20th day of each month for Lessor's royalty hereunder on all such gasoline or other content produced and delivered during the preceding calendar month. Lessor shall be entitled to one-eighth ($1/8$) of the net proceeds received by Lessee from the sale of any dry gas

Exhibit No. 9—(Continued)

remaining after the same shall have been treated and not used in its operations hereunder. It is understood that there may be commingled with said gas so to be treated gas produced from other properties, and that the apportionment of the gasoline or other content extracted will be based upon the respective quantities of gas metered and respective qualities tested, in such manner as may seem proper to Lessee, and that the apportionment of the dry gas residuum will be based upon the customary practice in the industry.

4. This lease shall terminate as to all rights and obligations contained hereunder unless Lessee shall on or before Twenty (20) years from the date hereof commence operations for the drilling of a well for oil or gas on the above described land, and prosecute the drilling thereof with due diligence and dispatch until a depth of Nine Thousand (9,000) feet has been reached, unless oil or gas is found in paying quantities at a lesser depth, or unless formations are encountered at a lesser depth which would indicate to Lessee's geologist that further drilling would be unsuccessful, or unless mechanical difficulties are encountered in the prosecution of the drilling of said well in the event such formations or mechanical difficulties are encountered, Lessee may abandon said well, but this lease shall continue in full force and effect provided operations for the drilling of a new well is commenced within ninety (90) days from the abandonment of the first well

Exhibit No. 9—(Continued)

and thereafter drilled diligently as hereinabove provided. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, Lessee shall drill a dry hole on this land, this lease shall terminate unless operations for the drilling of a new well shall be commenced within ninety (90) days from the date of the abandonment of said dry hole, and thereafter be drilled diligently by Lessee. [61]

5. If operations for the drilling of a well for oil or gas be not commenced on said land on or before Ten (10) years from this date, this lease shall terminate as to both parties, unless Lessee shall on or before Ten (10) years from this date pay or tender to Lessor or for Lessor's credit in the Anglo California National Bank at Bakersfield, California, or its successors, the sum of Thirty Dollars (\$30.00) per acre, which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of ten (10) years. All payments or tenders may be made by check or draft of Lessee mailed or delivered on or before the rental paying date. It is the intent hereof that rentals shall not be paid except for the purpose of deferring the commencement of drilling operations as herein provided.

6. Within ninety (90) days after discovery of oil in paying quantities in any of the wells herein provided for on the above described premises, Lessee agrees to commence operations for the drilling

Exhibit No. 9—(Continued)

of another well, and thereafter continuously operate at least one (1) string of tools, allowing ninety (90) days between the completion or abandonment of one well and the commencement of the next succeeding well until one (1) well has been drilled to each forty (40) acres, or a total of six (6) wells; provided, however, that if and when developments on said land shall indicate that oil cannot be produced therefrom in paying quantities but that gas can be produced in paying quantities, the obligation of Lessee hereunder shall be to drill only one (1) well to each One Hundred Sixty (160) acres. The number of oil or gas wells to be an average regardless of where drilled. Nothing herein shall be considered to limit the number of wells which Lessee may drill should it so elect in excess of the number hereinabove specified.

7. All rights hereby granted to Lessee (including the right to drill additional wells) shall continue after expiration of said twenty-year term of this lease as to the premises, or portion thereof then subject to this lease, as long as oil or gas or other hydrocarbon substance is produced therefrom in quantities deemed paying by Lessee, except as to such rights as may have been quitclaimed by Lessee or may have been terminated under the provisions of Section 18, hereof.

8. In the event of discovery of oil in any well on adjacent properties within three hundred thirty (330) feet of the boundary line of the above de-

Exhibit No. 9—(Continued)

scribed premises, and the same produces oil in paying quantities for thirty (30) consecutive days and a well offsetting same is not already drilled, or being drilled, then in that event Lessee shall within sixty (60) days after completion of said well to be offset, commence operations for the drilling of a well to offset such producing well and drill the same diligently to the strata from which oil is being produced on the adjacent property. Offset wells shall be located within three hundred (300) feet of the boundary line separating the properties, and within three hundred (300) feet of a line drawn from the well to be offset across said boundary line at right angles. "Paying quantities" as used in this Section shall be considered as such production as will be sufficient to reasonably assure the lessee a profit over and above the cost of drilling and producing such an offset well.

9. After the drilling of the first well herein required, there shall be no obligation upon the part of Lessee to drill, pump or operate said premises, except offset wells when wells offset are being operated, so long as the price of oil of the quality and gravity produced on said property shall be Seventy-five (75) cents or less per barrel at the well.

10. Notwithstanding anything in this lease contained to the contrary, it is expressly understood and agreed that the obligations imposed upon Lessee may be suspended so long as Lessee is prevented from performing such obligations by the elements, acci-

Exhibit No. 9—(Continued)

dents, strikes, lockouts, riots, delays in transportation, inability to secure materials in the open market or other causes beyond the reasonable control of Lessee, or compliance by Lessee with applicable Federal or State regulations or orders with respect to the time, order, location and/or manner of drilling wells, or the depth to which wells may be drilled, or the operation of wells, or with proration or curtailment regulations of authorities constituted by law, or by voluntary agreement of producers representing a majority of the production in the district in which said wells are located.

11. Lessee shall carry on all operations in a careful, workmanlike manner and in accordance with the laws of the State of California. Lessee shall keep full records of its operations in the drilling for and production of oil and of the production and sale of gas and casinghead gasoline from said property, and such records and operations of said property shall be open at all reasonable times to the inspection of Lessor or Lessor's agent, and Lessee shall furnish to Lessor or Lessor's agent a monthly statement of the production from said premises for the preceding month, which statement shall be made between the parties on or about the 20th day of each calendar month for the preceding calendar month, and shall be deemed an account stated unless specific objection be made thereto within ninety (90) days after receipt thereof by Lessor or Lessor's agent. Whenever in writing requested by Lessor,

Exhibit No. 9—(Continued)

Lessee shall furnish to Lessor a copy of the logs of all wells completed and tested on said property.

Lessor will from time to time fully inspect and become familiar with operations hereunder and the ordinary and usual methods employed by Lessee in gauging and testing the petroleum oil produced from the demised land and ascertaining and determining the amount, cuts for water and b. s., deductions for temperature, and the gravity of said oil, and Lessee shall furnish Lessor or Lessor's agents full opportunity to make all inspections desired by Lessor.

11a. The Lessee agrees, subject to the provisions hereof, to operate each completed oil well with reasonable diligence and in accordance with good oil field practice so long as such well shall produce oil in quantities deemed paying quantities by the Lessee while this lease is in force as to the portion of said land on which such well is situated.

12. Lessor shall have the right to the use of the surface of said land for agricultural and grazing purposes to the extent which will not interfere with the proper operation of the lease for oil or gas. Lessee agrees to conduct its operations so as to interfere as little as is consistent with the economical operation of the property for oil or gas with use of the land for agricultural or grazing purposes. Whenever required by Lessor in writing, Lessee shall fence all sump holes or other openings to safeguard live stock on said land.

Exhibit No. 9—(Continued)

Lessee may, either before or after the commencement of drilling operations hereunder, enter upon the herein demised land at any time for the purpose of conducting geological and geophysical work and the drilling of holes for such geological and geophysical information.

13. Lessee shall pay the surface owner or surface tenant for all damage to crops and trees existing at time of commencement of drilling hereunder, to live stock, fences, pipe lines, canals, buildings and other improvements caused by its operations under this lease. In event the parties hereto are unable to agree on the amount of such damage, then the same shall be left to arbitration conducted in accordance with the arbitration laws of the State.

14. Lessee agrees that no well shall be drilled nearer than one hundred fifty (150) feet of any dwelling house now on said premises without the written consent of Lessor. When requested by Lessor, Lessee shall bury its pipe lines below plow depth.

15. Lessee may at any time and from time to time, either before or after discovery of oil on the demised premises, quitclaim this lease in its entirety or as to part of the acreage covered hereby, and thereupon Lessee shall be released from all further obligations as to the land so quitclaimed, and all rentals and drilling obligations as set forth in this lease shall be reduced pro rata according to the acreage so quitclaimed by Lessee; it being par-

Exhibit No. 9—(Continued)

ticularly understood, however, that all lands so quit-claimed shall remain subject to—and Lessee shall have the right to use and enjoy—such rights of way and easements as may be necessary or convenient for Lessee's operations on the land retained by it. Except as herein provided, full right to such quit-claimed land shall revert in Lessor free and clear of all claims of Lessee except that Lessor and Lessor's successors or assigns shall not drill any well on the said land within six hundred (600) feet of any producing well retained by Lessee, or well then being drilled which subsequently is completed as a producing well.

16. Lessee shall pay all taxes levied on its improvements and personal property and all taxes levied on its oil stored on the leased premises. Lessor shall pay all taxes and assessments on the surface value of the land and on all other improvements and personal property thereon, also all taxes levied on any oil which Lessor may have stored on the said leased premises: All increase in the taxes on the demised premises or, if Lessee shall have quit-claimed a portion of the demised premises, on such part of the demised premises as is retained by Lessee, caused by or resulting from the discovery or production of oil, gas or other substances herein mentioned thereon and therefrom, whether assessed upon said land or as mineral rights or otherwise, and charges [62] and/or taxes of whatsoever kind levied or collected by reason of the production, sale

Exhibit No. 9—(Continued)

or removal of oil, gas or other substances from the demised premises shall be borne by the parties hereto in the proportion of Seven-eighths ($7/8$) by Lessee, and one-eighth ($1/8$) by Lessor. In the event that Lessor shall fail to pay any such taxes, assessments or charges so required to be paid by Lessor, Lessee may at its option pay the same; or in the event any of the taxes or assessments to be paid by Lessor are assessed against and/or paid by Lessee, then in either of such events Lessee may reimburse itself for such taxes or assessments so paid by it from any royalties or rentals accruing hereunder.

17. On the expiration of this lease, or its sooner termination, Lessee shall quietly and peacefully surrender possession of the premises to Lessor and deliver to Lessor a good and sufficient quitclaim deed, and shall so far as practicable cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, should Lessor desire to retain the same, Lessor may notify Lessee to that effect and thereupon Lessee shall leave such casing in the well as Lessor may require, and Lessor shall pay to Lessee fifty per cent (50%) of the original cost of such casing on the ground.

18. In case of default in performance by Lessee of any of its obligations under this lease, and the failure to remedy or to begin in good faith to remedy the same within sixty (60) days after written notice from Lessor so to do, specifying the particulars in which it is claimed Lessee is in de-

Exhibit No. 9—(Continued)

fault, then at the option of the Lessor, all rights of Lessee under this lease shall forthwith cease and terminate save and except that Lessee shall have the right to retain all wells then producing or in the course of drilling, as to which Lessee is not in default, with full right to operate, retain, produce, redrill, deepen and properly maintain all such wells subject to all provisions of this lease, and to use as much of said land as may be necessary or convenient for Lessee's operations of such wells as long as said wells respectively shall produce oil or gas in quantities deemed paying by Lessee, and Lessor shall not drill or permit to be drilled any well on said premises within Six Hundred (600) feet of any well so retained by Lessee. Forfeiture of rights as in this section provided shall be the exclusive remedy of Lessor for breach of obligations, or any thereof by Lessee excepting the obligation of Lessee to make full payment of royalties as in this lease provided. It is understood and agreed that the right of Lessor to declare forfeiture and termination of this lease for failure to commence operations for the drilling of the first well as provided in Sections 4 and 5 hereof, shall be absolute and no period of grace shall be granted Lessee.

19. All work done on the land by Lessee shall be at Lessee's sole cost and expense, and Lessee agrees to protect said land and Lessor from claims of contractors, laborers, or materialmen, and Lessor may post and keep posted on said lands such

Exhibit No. 9—(Continued)

notices as Lessor may desire to protect said lands against liens.

20. Lessor hereby agrees to defend the title to the land herein described and agrees that Lessee, at its option, may pay and discharge any taxes, mortgages or other liens existing, levied or assessed on or against the above described lands, and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

21. If the estate of either party hereto is assigned, (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to its successors and assigns, but no change or ownership in the land or in the rentals or royalties shall be binding on Lessee until Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment. Provided, however, that all payments or royalties due Lessor hereunder shall be payable as a whole to Lessor or Lessor's agent, (as provided in Section 23 hereof), and Lessee shall not be responsible for the division of the same in the event of any change of ownership in Lessor's interest hereunder.

22. "Drilling operations," or "Operations for the drilling of a well," as used in this lease is de-

Exhibit No. 9—(Continued)

fined to mean the placing of material upon the demised premises for the construction of a derrick for the drilling of an oil or gas well, followed diligently by the construction of such derrick and by actual drilling in the ground.

23. All money payments due Lessor hereunder shall be made for the account of and credit of Lessor to Anglo California National Bank at Bakersfield, California, or to such other person, bank or trust company in California as Lessor may designate to receive same for Lessor. If the interest of Lessor or a portion thereof is transferred and becomes vested in two or more parties, then such parties or a majority thereof in interest shall designate to Lessee in writing, accompanied by the acceptance of the payee, a bank or trust company in California to receive and distribute all such payments, and the Lessee upon tender of payment to same, shall be relieved from all obligations or responsibilities as to the proper distribution of the same. The action of the holders of the majority in ownership of Lessor's interest hereunder in instructing Lessee as to the bank or trust company to which payments are to be tendered or made, shall be binding upon all parties and any such majority is hereby authorized to designate or change the designated payee and to make the necessary arrangements with the payee for the distribution of funds. Lessee is hereby authorized to withhold the making of any payments until the provisions of this section are complied with.

Exhibit No. 9—(Continued)

24. Any notice or statement herein required or permitted to be given or furnished by one party to the other shall be in writing. Delivery of such written notice or statement to Lessor shall be made by depositing in the United States registered mail such written notice or statement addressed to Lessor at 1413 17th Street, Bakersfield, California, and delivery of such written notice or statement to Lessee shall be made by depositing in the United States registered mail such written notice or statement addressed to Lessee at Union Oil Building, Los Angeles, California. Either party hereto may by written notice change its address to any other location.

25. This lease and agreement shall be obligatory upon and shall inure to the benefit of the assigns and successors in interest of the respective parties hereto.

26. The entire agreement between the parties is embodied in this lease, and no covenant or agreement other than those set forth in this lease shall be obligatory upon either of the parties hereto except insofar as this lease may subsequently be modified by written agreement of the parties.

In Witness Whereof, the parties hereto have caused this lease to be executed the day and year first above written.

L. G. HELM,
ETTA HELM.

Lessor.

Exhibit No. 9—(Continued)

UNION OIL COMPANY OF
CALIFORNIA,

Lessee.

By W. W. ORCUTT,

Vice President.

By W. R. EDWARDS,

Secretary. [63]

General Form

State of California

County of Kern—ss.

On this 25th day of May, A. D. 1938, before me, M. J. Davis, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

M. J. DAVIS

Notary Public in and for said
County and State

(2nd General Form Verification and Corporation Form Verification not filled out.)

Exhibit No. 9—(Continued)

State of California

County of Los Angeles—ss.

On this 24th day of May, A. D., 1938, before me, Holt R. Gregory, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. W. Orcutt, known to me to be the Vice President, and W. R. Edwards, known to me to be the Secretary of Union Oil Company of California, the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

HOLT R. GREGORY

Notary Public in and for said
County and State.

My Commission Expires August 14, 1940. [64]

EXHIBIT No. 10

[Copyist's Note: This page contains the information appearing on the back of the attached instrument.]

Compared

3176

Recorded at Request of Security Title Insurance
and Guarantee Company

Jun - 1 1938

At 36 Min. Past 3 P. M. in Vol. 187 of Official Records,
Page 83 Kings County, Jos. M. Bowman,
Recorder

By Delana Embrey, Deputy

Copied Compared

Paged Indexed

Fee \$2.80

Borton, Petrini & Conron
Attorneys At Law
304 Professional Building
Bakersfield, California

11807

No. 62496

Baco.

Recorded at Request of Bakersfield Abstract Co.
May 27 1938 At 20 min. past 2 P. M. in Book 765
of Official Records Page 372, Kern County Records.

Chas. H. Shomate, Recorder

By Alice Jutson, Deputy Recorder

Compared

17/8/270 [65]

(Copy)

Know All Men By These Presents:

That Whereas, under date of June 29, 1937, L. G. Helm, as Trustee, and L. G. Helm individually, and Etta Helm individually, did make and execute a certain declaration of trust for the benefit of Lon V. Smith, Oscar Rudnick, George L. Bradford, M. J. Davis, Fred E. Borton, Morris Laba, Morris Himovitz, and Max Himovitz, as beneficiaries, which said declaration of trust, together with the approval and acceptance of the same by the beneficiaries, was on July 22, 1937 duly recorded in the office of the County Recorder of Kern County, California, in Book 737 of Official Records at page 158, Kern County Records, and was thereafter and on August 2, 1937 duly recorded in the office of the County Recorder of Kings County, in Volume 172 of Official Records at page 248, Kings County Records;

And Whereas, each of the beneficiaries named in said declaration of trust retains in his own name and in his own right all benefits and rights thereunder, without having assigned, transferred or hypothecated the same;

Now Therefore, in consideration of One Dollar

to them in hand paid, the said beneficiaries and the undersigned do hereby vacate, abrogate, set aside, and render of no further effect or validity the said declaration of trust and the rights of the beneficiaries, and each of them, thereunder, and do by these presents remise, release and forever quit-claim unto said L. G. Helm all of their rights under said declaration of trust and in the lands and premises described therein, and in each and every part thereof.

In Witness Whereof, the said beneficiaries under said trust have hereunto set their hands this 24th day of May, 1938.

(Sgd.)

LON V. SMITH

(Sgd.)

JANE W. SMITH

His wife [66]

“

OSCAR RUDNICK

“

LIBBIE RUDNICK

his wife

“

GEORGE L. BRADFORD

“

MARION BRADFORD

his wife

“

FRED E. BORTON

“

CARRIE L. BORTON

his wife

“

M. J. DAVIS

“

LORENE M. DAVIS

his wife

“

MORRIS LABA

“

ROSE LABA

his wife

(Sgd.)	MORRIS HIMOVITZ
“	PAULINE HIMOVITZ
	his wife
“	MAX HIMOVITZ
“	MARIE HIMOVITZ
	his wife [68]

State of California

County of Kern—ss.

On this 24th day of May, 1938, before me, Constance Campbell, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Lon V. Smith and Jane W. Smith, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Seal] (Sgd). CONSTANCE CAMPBELL
Notary Public in and for the County of Kern,
State of California.

State of California

County of Kern—ss.

On this 24th day of May 1938, before me Constance Campbell, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Oscar Rudnick, Libbie Rudnick, Fred E. Borton, M. J. Davis, Lorene M. Davis, Morris Laba, Rose Laba, Morris Himovitz, Pauline Himovitz, Max Himovitz and

Marie Himovitz, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Seal] (Sgd). CONSTANCE CAMPBELL
Notary Public in and for the County of Kern,
State of California.

State of California
County of Kern—ss.

On this 26th day of May, 1928, before me, Constance Campbell, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared George L. Bradford, Marion Bradford and Carrie L. Borton, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Seal] (Sgd). CONSTANCE CAMPBELL
Notary Public in and for the County of Kern,
State of California. [67]

EXHIBIT No. 11

Compared

4206

GRANT DEED

L. G. Helm, et. ux.

to

C. E. Houchin

Dated....., 19...

Recorded at Request of
Security Title Insurance and
Guarantee Company

Jul 27 1938

At 6 Min. Past 10 A. M.

In Vol. 188 of Official Records

Page 375 Kings County

JOS. M. BOWMAN,

Recorder

By J. BEVAN

Deputy

Copied

Compared

Bakersfield Abstract Co.

1704 Chester Avenue

Bakersfield, California

Fee 1.00.

This Deed Requires I. R. S.

GRANT DEED

In consideration of \$10.00, receipt of which is acknowledged, L. G. Helm and Etta Helm, his wife,

whose address is.....do.....hereby grant to C. E. Houchin whose address is.....all that real property in the.....County of Kings, State of California, described as:

The West half of the Northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$); the East half of the Northwest quarter ($E\frac{1}{2}$ of $NW\frac{1}{4}$) and the East half of the Southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of Section Thirty (30), Township Twenty-four (24) South, Range Twenty-two (22) East, M.D.B.M.

Subject to: Conditions, restrictions, reservations and rights of way of record.

An agricultural lease for grain crops expiring July 1, 1939, which covers this and other property.

Dated this first day of July, 1938.

L. G. HELM

ETTA HELM

\$8.00 in Documentary stamps cancelled 7/25/38
by G. L. B. [69]

State of California

County of Kern—ss.

On this 22nd day of July, 1938, before me, Geraldine Graham a Notary Public in and for said County, personally appeared L. G. Helm and Etta Helm, his wife known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

GERALDINE GRAHAM

Notary Public in and for said
County and State

Order No.....

Escrow No.....

When Recorded Please Mail to:

C. E. Houchin

Bakersfield, Calif. [70]

EXHIBIT No. 12

DECLARATION OF TRUST

Whereas, by declaration of trust, bearing date the 29th day of June 1937 and recorded in the office of the County Recorder of Kern County, California, on July 22, 1937 in Book 737 of Official Records at page 158 and also recorded in the office of the County Recorder of Kings County, California, on August 2, 1937 in Book 172 of Official Records at page 248, L. G. Helm did declare himself trustee for certain persons and upon certain trusts therein specified, and affecting certain real property in Kern County and in Kings County, California, therein more specifically described; and

Whereas, thereafter the beneficiaries named in said trust agreement did make, execute, deliver, and

Exhibit No. 12—(Continued)

cause to be recorded in the Counties of King and Kern an instrument cancelling said trusts and relinquishing their interest therein under the said L. G. Helm; and

Whereas, said last mentioned instrument was made, executed, delivered and recorded by the said beneficiaries in full reliance upon the integrity of him, the said L. G. Helm for the purpose of enabling him to enter into certain agreements and transactions regarding the property, the subject matter of said trust, without the necessity of complicated instruments and proceedings which otherwise would have been necessitated by the existence of said trust; and

Whereas, the said L. G. Helm has duly executed and delivered the said instruments and duly made and carried out the said Transactions above referred to, and fully [71] accounted to the beneficiaries under said trust for his entire action and receipts in connection therewith; and

Whereas, the said beneficiaries do hereby ratify and confirm each and all of the acts of the said L. G. Helm in regard to said property; and

Whereas, it is now desired to re-declare and re-establish said trust as to the property remaining of said trust property in the hands of the said L. G. Helm; and

Whereas, subsequent to the date of the original

Exhibit No. 12—(Continued)

declaration of trust one of the beneficiaries thereof, to-wit: Morris Laba, has, with the approval of the said trustee, sold, assigned and transferred one-fourth of his interest in said trust and in the trust property to Charlie Ross, and has sold, assigned and transferred one-fourth of his interest in said trust and in the trust property to T. P. Rootes, thus leaving the said Morris Laba the owner and holder of a one-eighteenth interest in said trust and trust property, and constituting the said Charles Ross the owner and holder of a one-thirty-sixth interest in said trust and trust property, and constituting the said T. P. Rootes the owner and holder of a one-thirty-sixth interest in said trust and trust property; and

Whereas, each of the other beneficiaries retains his original interest of $1/9$ th unsold and undisposed of:

Now Therefore, in consideration of the premises and of the sum of One Dollar to him in hand paid by each of the beneficiaries hereinafter named, the said L. G. Helm and Etta Helm, his wife, do hereby make the following declaration of trust, and do declare that the trust property consists of real estate as follows:

The east half of the southeast quarter ($E\frac{1}{2}$ of $SE\frac{1}{4}$) of section twenty-five (25) and the southeast quarter ($SE\frac{1}{4}$) of section thirty-six (36) all in township twenty-four (24) south, range twenty-

Exhibit No. 12—(Continued)

one (21) east, M.D.B.M. in the County of Kings, State of California; and

The west half ($W\frac{1}{2}$) of the northwest quarter ($NW\frac{1}{4}$) of section thirty (30) and the south half of the north half ($S\frac{1}{2}$ of $N\frac{1}{2}$) of section twenty-nine (29); the south half of the northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$) and the west half of the northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of section thirty-two (32); the west half ($W\frac{1}{2}$) of section thirty-three (33); and the west half ($W\frac{1}{2}$) of section thirty-four (34) all in township twenty-four (24) south, range twenty-two (22) east, M.D.B.M. in the County of Kings, State of California; and

The north half of the northwest quarter ($N\frac{1}{2}$ of $NW\frac{1}{4}$) of section three (3); the northeast quarter and the north half of the southeast quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$) of section four (4); all of the north half of the north half ($N\frac{1}{2}$ of $N\frac{1}{2}$) except the northeast quarter of the northeast quarter ($NE\frac{1}{4}$ of $NE\frac{1}{4}$) and the east 29.69 acres of the northwest quarter of the northeast quarter ($NW\frac{1}{4}$ of $NE\frac{1}{4}$) of section six (6) all in township twenty-five (25) south, range twenty-two (22) east, M.D.B.M. in the County of Kern, State of California; and

The east half of the southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) and the southwest quarter of the southwest quarter ($SW\frac{1}{4}$ of $SW\frac{1}{4}$) of section one (1) in township twenty-five (25) south, range twenty-one (21) east, M.D.B.&M. in the County of Kern, State of California.

Exhibit No. 12—(Continued)

Said parcels of land are subject to the following described leases and encumbrances, to-wit:

1. A certain oil and gas lease bearing date the 24th day of May 1938, executed by L. G. Helm and Etta Helm, his wife, as lessors, to Union Oil Company of California, a California corporation as lessee, covering the South half of the northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$) of section 32; the west half of the southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of section 33; the west half of the southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of section 34; all in township 24 south, range 22 east, of the M.D.B.M., Kings County, California.

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2. A certain oil and gas lease bearing date the 21st day of May 1938, executed by L. G. Helm and Etta Helm, his wife, as lessors, and Signal Oil and Gas Company, a corporation, as lessee, describing the

North half of the southeast quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$) of section four (4) township twenty-five (25) south, range twenty-two (22) east, M.D.B.M., according to the Official Plat of the Survey of the said land, returned to the general land office by the Surveyor-General, in the County of Kern, State of California.

3. A certain oil and gas lease bearing date the 19th day of May, 1938, executed by L. G. Helm and Etta Helm, his wife, as lessors, and Barnsdall Oil Company, a corporation, as lessee, describing the

Exhibit No. 12—(Continued)

East half of southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of section thirty-three (33) and east half of southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of section thirty-four (34) all in township twenty-four (24) south, range twenty-two (22) east, M.D.B.M. Kings County, State of California.

4. A certain oil and gas lease bearing date the 20th day of May, 1938, executed by L. G. Helm and Etta Helm, husband and wife, as lessors, and Pacific Western Oil Corporation, a Delaware corporation, as lessee, describing the

West half of northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of section 32, township 24 south, range 22 east, M.D.B.M. Kings County, California.

5. A certain deed of mineral right bearing date the 18th day of May, 1938 between L. G. Helm and Etta Helm, his wife, as grantors, and Standard Oil Company of California, a Delaware corporation, as grantee, describing the

North half ($N\frac{1}{2}$) of the northwest quarter ($NW\frac{1}{4}$) of section three (3) and the northeast quarter ($NE\frac{1}{4}$) of section four (4) township twenty-five (25) south, range twenty-two (22) east, M.D.B.M. Kern County, California;

The south half ($S\frac{1}{2}$) of the north half ($N\frac{1}{2}$) of section twenty-nine (29) the northwest quarter ($NW\frac{1}{4}$) of section thirty-three (33), and the northwest quarter ($NW\frac{1}{4}$) of section thirty-four (34) township twenty-four (24) south, range twenty-two (22) east, M.D.B.M. Kings County, California.

Exhibit No. 12—(Continued)

The said L. G. Helm does hereby declare that all of his rights, powers and authorities, privileges and benefits under the terms of said leases, and each of them, and under the terms of the said deed of mineral right are held upon the same trusts as the real estate to which the same relate, and as hereinafter more particularly described.

Specification of Trust

The said L. G. Helm and Etta Helm, his wife, do hereby acknowledge and declare that the interests held by the said L. G. Helm in the property described above is held and shall be held In Trust for the following named persons in the proportions set after their names; (certain of the beneficiaries under said trust having elected that their interest thereunder shall be a joint estate with their wives, and in each instance of a joint estate the interest held by husband and wife in joint tenancy being one-ninth).

1. Lon V. Smith and Jane W. Smith,
his wife as joint tenants.....1/9
2. Geo. L. Bardford and Marion Brad-
ford, his wife, as joint tenants.....1/9
3. M. J. Davis and Lorene M. Davis, his
wife, as joint tenants.....1/9
4. Morris Himovitz1/9
5. Max Himovitz1/9
6. Oscar Rudnick1/9
7. Fred E. Borton and Carrie L. Bor-
ton, his wife, as joint tenants.....1/9

Exhibit No. 12—(Continued)

8. L. G. Helm.....	1/9
9. Morris Laba	1/18 A
10. Charlie Ross	1/36 A
11. T. P. Rootes.....	1/36 A

Said Trustee shall have and hold the legal title to said property and all interest now held or hereafter acquired in and to said property for the benefit of said beneficiaries and to manage and control the same, to sell, convey, lease, including oil and gas leases, for any period or periods within or extending beyond [73] the life of this trust, including for purposes of developing and producing oil, gas, and other hydrocarbon substances from said real property, to encumber the same and to execute and deliver any such conveyances, encumbrances, leases and oil and gas leases, providing, however, said Trustee shall first have obtained from the committee hereinafter provided, written consent to so execute and deliver such conveyances, encumbrances, leases and oil and gas leases.

The trustee shall ascertain and pay any amount of principal and interest which may become due and payable upon any encumbrances hereafter placed upon said property including taxes and assessments, providing, however, that each of the beneficiaries shall provide their proportion of the funds necessary for the payment of the same and said trustee shall collect, pay out, and distribute all income, profits and receipts from said real property, Excepting However, that he shall retain the

Exhibit No. 12—(Continued)

sum of \$1.00 annually in full payment of his services in connection with this trust.

In the event any beneficiary hereunder shall fail to pay his proportion of any sums so expended by the trustee, said trustee is hereby empowered and authorized to advance any such sum and in the event such defaulting beneficiary does not repay such advance within ten days after receipt of written demand therefor from said trustee, then in that event the trustee shall give written notice of such default to each of the remaining beneficiaries and should such remaining beneficiaries or any one of them not purchase the interest in this trust of such defaulting beneficiary within fifteen days of such last mentioned notice, then the trustee with the written consent of the committee hereinafter referred to, is hereby authorized and directed to proceed to sell and shall sell the interest of such defaulting beneficiary in the manner of the sale of real estate upon foreclosure under deeds of trust securing indebtedness, said trustee giving notice and conducting said sale as provided by statute therefor.

Should sale be so made of the interest of any beneficiary hereunder then such beneficiary whose interest is so sold shall be debarred from any right, title or interest whatsoever in and to said trust property, or any beneficial interest therein and of all equity of redemption of the same and the certificate of the trustee to the purchaser at such sale shall be conclusive evidence that such beneficial in-

Exhibit No. 12—(Continued)

terest and all title thereto has actually passed to such purchaser, providing however, that if the interest so sold shall bring more than the money owed by such defaulting beneficiary including the expenses of such sale, the trustee shall account and pay to the beneficiary whose interest is so sold, any excess.

No assignment of any beneficial interest or part thereof shall be valid unless and until the trustee shall receive a duly executed original of such assignment duly accepted by the assignee disclosing the address of such assignee and including upon the part of such assignee an assumption of the obligation of the beneficiaries herein as to the interest so assigned.

There is hereby created a committee of four with whom the trustee shall have an equal vote as if he were a member thereof, which shall have, and is hereby granted, exclusive power to manage and control the property, the subject of the trust, and to lease, including for oil and gas development purposes, sell or otherwise dispose or encumber the same, when in their judgment it is to the advantage of the trust and of the persons interest therein so to do, and said trustee shall execute and deliver such conveyances, encumbrances, leases and oil and gas leases, as he may be directed to do so by the majority vote of said committee at a meeting duly and regularly called.

In case of vacancy in the trusteeship or in the

Exhibit No. 12—(Continued)

committee the same shall be filled and the said committee shall have and is hereby granted full power to choose any of the beneficiaries in this trust to serve on said committee or to act as sub- [74] stitute trustee until a new trustee is appointed, which trustee shall be appointed by a majority vote of the beneficiaries in this trust, and such new trustee shall succeed to the right, powers and authorities of the trustee without any special conveyance or transfer from the former trustee, or otherwise to the new trustee and until such time as such substitute or new trustee shall be appointed, the said committee shall as a unit have, and is hereby granted, full power and control over the trust property, including all of the rights and duties of such trustee.

The trustee herein named shall continue in office until his death, resignation or removal by a final order of court, and each member of the committee hereinafter named shall continue in office until his death, resignation or removal by a final order of the court.

The following named persons are hereby designated as constituting the committee referred to, to-wit:

Lon V. Smith
Morris Himovitz
M. J. Davis
Fred E. Borton

It is further hereby agreed that this trust shall continue for a period of twenty-five years from this

Exhibit No. 12—(Continued)

date, unless and until sooner terminated by the agreement of the parties hereto, or in accordance with the terms hereinafter set forth.

This trust may be terminated at any time upon the consent and written approval of the holders of two-thirds of the total beneficial interest herein, and upon such termination the property being the subject of this trust shall be conveyed by the trustee to the beneficiaries *proprately* according to the interest so held, it being understood that in the event at the date of such partition and division should said real property or any portion thereof be subject to any existing oil and gas lease, that all of the beneficiaries at the date of such termination shall participate *prorately* in all future royalties, rents, issues and profits paid under the terms and conditions of any existing lease or leases.

In the event the beneficiaries herein are unable to decide among themselves as to an equitable partition of said property, then in that event the committee shall divide such property in such equal units as may in their judgment be the most equitable and practical partition of such property, whereupon each of said beneficiaries shall draw by lot the unit to which they shall become entitled.

Upon the completion of the trust by lapse of time or otherwise, unless previously said trust property has been so partitioned, same shall be distributed among the beneficiaries in undivided interests in proportion to their respective interest, and all

Exhibit No. 12—(Continued)

things of value arising therefrom or subject thereto and in the hands of the trustee, shall likewise be distributed.

In Witness Whereof, the said L. G. Helm, as trustee, and the said L. G. Helm and Etta Helm, his wife, as individuals, have executed this declaration and the said beneficiaries have consented thereto, this 15th day of July 1938.

L. G. HELM,

as Trustee

L. G. HELM,

individually

ETTA HELM,

individually

State of California

County of Kern—ss.

On this 31st day of October A.D. 1938 before me, Geraldine Graham a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Exhibit No. 12—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal [75] the day and year in this certificate first above written.

[Seal] GERALDINE GRAHAM

Notary Public in and for said County and State of California.

We, the undersigned, beneficiaries in the foregoing declaration, have read, understood, and do hereby approve the same, and agree to be fully bound thereby.

LON V. SMITH
OSCAR RUDNICK
GEO. L. BRADFORD
FRED E. BORTON
MORRIS HIMOVITZ
MAX HIMOVITZ
M. J. DAVIS
MORRIS LABA
CHARLES R. ROSS
T. P. ROOTES

State of California
County of Kern—ss.

On this 31st day of October A. D. 1938 before me, Geraldine Graham, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Lon V. Smith, Oscar Rudnick, Geo. L. Bradford, Fred E. Borton, Morris Himovitz, Max Himovitz, M. J. Davis, Morris Laba, Charles R. Ross, T. P. Rootes

Exhibit No. 12—(Continued)

known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

GERALDINE GRAHAM

Notary Public in and for said County and State of California.

State of California

County of Kern—ss.

On this 31st day of October A. D. 1938 before me, Geraldine Graham, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm, Trustee known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same, as trustee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

GERALDINE GRAHAM

Notary Public in and for said County and State of California.

Exhibit No. 12—(Continued)

Recorded at request of Bakersfield Abstract Co.,
Nov. 1, 1938 at 9 A.M. in Book 834 of Official Rec-
ords page 28 Kern County Records.

CHAS. H. SHOMATE,

Recorder

By FRANCES AHMANN,

Deputy Recorder

Checked by: P. App.

A

25099 Compared by: H. Hoberecht

(Duly Verified) [76]

EXHIBIT No. 13

Form 1065

(13)

Oil

Treasury Department Internal Revenue Service

United States

1938 Partnership Return of Income 1938

(To be Filed Also by Syndicates, Pools, Joint
Ventures, Etc.)

For Calendar Year 1938

or fiscal year beginning....., 1938, and ended
....., 1939.

(File this return not later than the 15th day of
the 3d month following the close of the taxable year)

(Print plainly Name and Business Address of
the Organization)

Helm & Smith Syndicate (Name) c/o L. G. Helm, 1413 17th Street (Street and number), Bakersfield, (Post office) Kern (County), California (State.)

Business or Profession (Syndicate). (Also)
 Do Not Use This Space Do Not Use These Spaces
 (Auditor's Stamp) File Code.....
 Serial No. 971504.
 District
 (Date Received)

Received
 Feb 27 (Illegible)
 6th Calif. Dist.

[Stamp]
 Revenue (Illegible)
 Jun 7 1939
 Los Angeles Division

GROSS INCOME

Item and
 Instruction
 No.

13. Total income in items 3 to 12 (enter nontaxable income in Schedules A and G)
 See Attached Income Account.....\$25,336.46

DEDUCTIONS

24. Total deductions in items 14 to 23
 See Attached Income Account..... 4,902.53

25. Ordinary net income (item 13 minus item 24)
 See Attached Income Account.....\$20,433.93

26. Net short-term capital gain (or loss) (from line
1, column 4, Summary, Schedule H).....\$ 5,878.30

27. Net long-term capital gain (or loss) (from line
2, column 4, Summary, Schedule H).....\$ 2,800.00

[78]

Schedule A.

INTEREST ON GOVERNMENT OBLIGATIONS, ETC.

(See Instruction 7)

[Ruled Form—Not Filled In]

Schedule B.

GAINS AND LOSSES FROM SALES OR EXCHANGES
OF PROPERTY OTHER THAN CAPITAL ASSETS.

(See Instruction 10)

[Ruled Form—Not Filled In]

Schedule C.—TAXES.

(See Instruction 18)

[Ruled Form—Not Filled In]

Schedule D.—BAD DEBTS.

(See Instruction 20)

[Ruled Form—Not Filled In]

Schedule E.—DEPRECIATION.

(See Instruction 21)

[Ruled Form—Not Filled In]

Schedule F.

EXPLANATION OF DEDUCTIONS CLAIMED
IN ITEMS 17 AND 23

[Ruled Form—Not Filled In]

Schedule G.

NONTAXABLE INCOME OTHER THAN INTEREST
REPORTED IN SCHEDULE A.

(See Instruction 13)

[Ruled Form—Not Filled In]

[79]

Schedule H.

GAINS AND LOSSES FROM SALES OR EXCHANGES
OF CAPITAL ASSETS.

(See Instructions 26-27)

Short-Term Capital Gains and Losses—Assets
Held Not More Than 18 Months
[See Attached Schedule]

Long-Term Capital Gains and Losses—Assets Held for More
Than 18 Months but Not for More Than 24 Months
[See Attached Schedule]

Long-Term Capital Gains and Losses—Assets
Held for More Than 24 Months
[See Attached Schedule]

SUMMARY OF CAPITAL NET GAINS OR LOSSES
[Ruled Form—Not Filled In]

Schedule I.
CONTRIBUTIONS OR GIFTS PAID.
(See Instruction 28)
[Ruled Form—Not Filled In]

[80]

Schedule J.
PARTNERS' SHARES OF INCOMES AND CREDITS
(See Instruction 28)
[See Attached Schedule]

CONTINUATION OF SCHEDULE J
[Ruled Form—Not Filled In]

Questions

1. Date of organization, January 6, 1938.
 2. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Syndicate.
 3. If return was filed for preceding year, to which collector's office was it sent?.....
 4. Check whether this return was prepared on the cash [xx] or accrual ☐ basis.
 5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market, whichever is lower.....
- If any other basis is used, attach statement de-

scribing basis fully, state why used and the date inventory was last reconciled with stock.....

6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company, as defined in section 402? (Answer "Yes" or "No") No. If answer is "Yes," attach schedule required by Instruction I.

7. Was return of information on Forms 1096 and 1099 filed for the calendar year 1938? (See Instruction H)No.

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return, made in good faith for the accounting period stated, pursuant to the Revenue Act of 1938 and the Regulations issued under authority thereof.

L. G. HELM,
Trustee.

Subscribed and sworn to before me this 27th day of February, 1939.

GERALDINE GRAHAM,
Notary Public.

(If this return was prepared for you by some other person, the following affidavit must be executed)

Affidavit (See Instruction D)

I/we swear (or affirm) that I/we prepared this return for the organization named herein and that

the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

CHAS. A. HARE.

Subscribed and sworn to before me this 27th day of February, 1939.

[Seal]

GERALDINE GRAHAM,

Notary Public. [81]

PARTNERSHIP INCOME TAX RETURN YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 - 17th Street
Bakersfield, California

INCOME ACCOUNT

Revenues:

Sale of Sheep Feed on Lands.....	860.27
Sale of Grain from Lands.....	1,170.37
Lon V. Smith received a Commission from Miller & Lux on the original Sale of certain Lands to this Syndicate, and being a member of the Syndi- cate, he turned over to the Syndicate for benefit of all	1,820.44

3,851.08

Disbursements:

Paid for relinquishment of Sheep Feed on Lands....	368.00
Taxes—State and County—Real Estate.....	568.68
Interest	2,671.45
Recording fees, Stenographer.....	50.62
Office Rent	25.00
Grain Insurance	8.48

3,692.23

3,692.23

158.85

Other Revenues:		
Gain from Sale of Capital Assets		
per schedule attached.....		8,678.30
Oil Lease Bonuses received, per schedule,		
amount taxable		21,485.38
		<u> </u>
		30,322.53
Other Deductions:		
Escrow fees on Union Oil Co. Lease.....	10.30	
Commission to L. G. Helm.....	500.00	
Commission to Lon V. Smith.....	500.00	
Commission to J. Lee Cross.....	200.00	1,210.30
	<u> </u>	<u> </u>
Total Net Taxable Income.....		29,112.23
		<u> </u>
Summary:		
Ordinary Net Income.....		20,433.93
Short term Capital Gains.....		5,878.30
Long term Capital Gains.....		2,800.00
		<u> </u>

DISTRIBUTIVE SHARES.

Distributees	Ordinary Net	Capital Gains Short term	Long term	Totals
Morris Himovitz	\$ 2,270.44	\$ 653.14	\$ 311.11	3,234.69
Max Himovitz	2,270.44	653.14	311.11	3,234.69
Oscar Rudnick	2,270.44	653.14	311.11	3,234.69
Fred Borton	2,270.44	653.14	311.11	3,234.69
Marvin Davis	2,270.44	653.14	311.11	3,234.69
George Bradford	2,270.43	653.15	311.11	3,234.69
Lon V. Smith.....	2,270.43	653.15	311.11	3,234.69
L. G. Helm.....	2,270.43	653.15	311.11	3,234.69
Morris Laba	1,135.22	326.57	155.56	1,617.35
Charles Ross	567.61	163.29	77.78	808.68
T. P. Rootes.....	567.61	163.29	77.78	808.68
	20,433.93	5,878.30	2,800.00	29,112.23
				[82]

PARTNERSHIP INCOME TAX RETURN
YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 17th Street
Bakersfield, California

SCHEDULE OF
GAINS FROM SALE OF CAPITAL ASSETS
—REAL ESTATE—

—A—

June 29, 1938—Sold to C. E. Houchin, Bakersfield, California.

Lands in Section 30, T 24, R 22, as follows:

W $\frac{1}{2}$ of N. E. $\frac{1}{4}$ 80 acres

E $\frac{1}{2}$ of N. E. $\frac{1}{2}$ 160 "

and Lands in

Section 1, T. 25, R. 21, as follows:

S $\frac{1}{2}$ of N. E. $\frac{1}{4}$ 92.53 acres

For the Total Price of.....10,806.25

Jan. 8, 1937, Purchased these lands from

Miller & Lux, 332.53 acres @ 15.00 per acre..... 4,927.95

Gross Gain 5,878.30

—B—

July 25, 1938, Sold to C. E. Houchin, Bakersfield, California.

Lands in Section 32, T 24, R 22, as follows:

the S. W. $\frac{1}{4}$, 160 acres

and Lands in Section 30, T 24, R 22

as follows:

the E $\frac{1}{2}$ of N E $\frac{1}{4}$ 80.acres

For the total price of..... 7,800.00

Jan. 8, 1937, Purchased these lands from

Miller & Lux,

240 acres @ 15.00 per acre..... 3,600.00

Gross Gain 4,200.00

Gain to be taken into account:

"A" 100% of 5,878.30 5,878.30

"B" 66 $\frac{2}{3}$ % of 4,200.00 2,800.00

8,678.30

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PARTNERSHIP INCOME TAX RETURN
YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 7th Street
Bakersfield, California

SCHEDULE OF LEASES GIVEN FOR EXPLORATION
and
AMOUNTS RECEIVED AS BONUSES ON SAME

May 1938, to Standard Oil Company

Granted the oil and gas in
the N $\frac{1}{2}$ of Sec. 3, T 25, R 22;
the N E $\frac{1}{4}$ of Sec 4, T 25, R 22;
the S $\frac{1}{2}$ of the N $\frac{1}{2}$ of Sec 29, T, 24, R 22;
the N W $\frac{1}{4}$ of Sec 34, T 24, R 22;
and the N W $\frac{1}{4}$ of Sec 33, T 24, R 22,
for a period of 20 years for a bonus of.....14,400.00

June 1938, to Union Oil Company

Leased
the S $\frac{1}{2}$ of the N W $\frac{1}{4}$ of Sec. 32, T 24, R 22;
the W $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. 33, T 24, R 22;
the W $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. 34, T 24, R 22;
for a period of 5 years for a bonus of..... 7,200.00

June 1938, to Barnsdall Oil Company—Leased

the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. 33, T 24, R 22;
the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec 34, T 24, R 22;
for a period of 5 years for a bonus of..... 4,000.00

June 1938, to Signal Oil & Gas Company

Leased
the N $\frac{1}{2}$ of the S E $\frac{1}{4}$ of Sec. 4, T 25, R 22;
for a period of 5 years for a bonus of..... 2,035.00

June 1938, to Pacific Western Oil Company

Leased
the W $\frac{1}{2}$ of the N E $\frac{1}{4}$ of Sec 32, T 24, R 22
for a period of 5 years for a bonus of..... 2,000.00

—————
29,635.00

Less Statutory Depletion Allowance of $27\frac{1}{2}\%$ 8,149.62

—————
21,485.38

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PARTNERSHIP INCOME TAX RETURN
YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 17th Street
Bakersfield, California

SCHEDULE OF REAL ESTATE PURCHASES
and
EXPLANATION OF SYNDICATE PURPOSES

January 8, 1937—L. G. Helm purchased from Miller & Lux, under a contract of sale, the following described un-improved Real Estate, viz:

92.53 Acres in	Sec 1, T 25 R 21 M.D.B & M (described by metes & bounds)
434.68 Acres in	the N $\frac{1}{2}$ and the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. Sec 30, T 24 R 22;
160. Acres in	the S $\frac{1}{2}$ of the N $\frac{1}{2}$ of Sec. 29;
160. Acres in	the S W $\frac{1}{4}$ of Sec. 32;
80. Acres in	the S $\frac{1}{2}$ of the N W $\frac{1}{4}$ of Sec. 32;
80. Acres in	the W $\frac{1}{2}$ of the N E $\frac{1}{4}$ of Sec. 32;
320. Acres in	the W $\frac{1}{2}$ of Sec. 33;
320. Acres in	the W $\frac{1}{2}$ of Sec. 34;
	All in T 24, R 22, M.D.B.M.
80. Acres in	the N $\frac{1}{2}$ of the N W $\frac{1}{4}$ of Sec. 3;
160. Acres in	the N E $\frac{1}{4}$ of Sec. 4;
81.40 Acres in	the N $\frac{1}{2}$ of the S E $\frac{1}{4}$ of Sec. 4;
	All in T 25, R 22, M.D.B.& M.
80. Acres in	the E $\frac{1}{2}$ of the S E $\frac{1}{4}$ of Sec. 25;
160. Acres in	the S E $\frac{1}{4}$ of Sec. 36;
	All in T 24, R 21, M.D.B.& M.
122.28 Acres in	the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ and the S W $\frac{1}{4}$ of Sec. 1 T 25 R 21 M.D.B. & M.
96.37 Acres	being all of the N $\frac{1}{2}$ of the N $\frac{1}{2}$ of Sec 6, T 25, R 22, M.D.B.& M, except the N E $\frac{1}{4}$ of the N E $\frac{1}{4}$; and the E 29.69 acres of the N W $\frac{1}{4}$ of the N E $\frac{1}{4}$;
<hr style="width: 10%; margin-left: 0;"/>	
2427.26 acres	@ 15.00 per acre.....36,408.90

The above lands were purchased in behalf of a syndicate of individuals whose names and shares are stated in the partnership Income Return to which this Schedule is attached, and with the purpose of leasing or selling same to the best advantage of the interested persons. The Syndicate holds title, through L. G. Helm, to all lands except 572.53 acres sold to C. E. Houchin.

[85]

EXHIBIT No. 14

No.	6th Cal.
(For Washington Use	(Collection district)
Only)	Assessment List,
Form 707	Form No. 23 A
Treasury Department	Apr 1941
Internal Revenue Service	(Month) (Year)
(To be stamped above by	4004 / 4
Collector, showing Dis-	(Page) (Line)
trict and date received)	(For Washington Use
	Only)

1938 Return of Capital-Stock Tax

For Year Ending June 30, 1938
(Sec. 601, Revenue Act of 1938)

This return must be filed in triplicate, and received with remittance by the Collector of Internal Revenue for your district or Baltimore, Md., on or before July 31, 1938.

[Stamp]

Received

with Remittance

Apr 26 1941

Coll. Int. Rev.

Los Angeles, Cal.

O. G. S.

1. Name Helm and Smith Syndicate (Print name of corporation, joint-stock company, or association)
2. Address c/o L. G. Helm, 1413 17th St., Bakersfield, California (Give principal place of business in the United States).
3. Home office located at c/o L. G. Helm, 1413 17th St., Bakersfield, California (Give street and number, city or town, and country).
4. Nature of business in detail See rider attached.
5. Was a 1937 capital-stock tax return filed? No.
Name under which filed. (If different, attach statement explaining fully).
6. Date of close of last income tax year ended on or prior to June 30, 1938 December 31, 1937.
Was an income tax return for that year filed?
Yes. District, 6th California.

Name under which filed Fiduciary return, L. G. Helm, Trustee.

If the corporation is newly organized and has not established an income tax year, state date of organization. See rider.
7. Affiliated companies (domestic or foreign) em-

playing capital in the United States. None.

8. Declared value of entire capital employed in the transaction of business in the United States.....\$300,000.

(The value declared must be definite and unqualified. A value must be declared In Every Case regardless of whether exemption from the tax is claimed. See instructions 1 and 2.)

9. Exemptions.—The Act provides for exemptions from the tax only on the grounds indicated below. Corporations claiming exemption must (1) declare a value under item 8, (2) check the appropriate block under item 9 showing the basis of the claim, and (3) submit with the return a full statement of the evidence specified under the block checked.

- ☐ Corporation exempt from income tax under section 101, Revenue Act of 1938. State under which subsection of section 101.....
- ☐ Insurance company subject to tax under section 201, 204, or 207, Revenue Act of 1938. State which section.....
- ☐ Corporation not doing business in the United States. (1) Furnish information required under instruction 3. (2) Declare value of capital employed in the transaction of business in the United States in item 8, above.

Computation of Tax		For Use of Taxpayer	For Use of Department
10.	Declared value. (Must be identical figure entered in item 8.).....	\$300,000.00	\$.....
11.	Tax at rate of \$1 for each full \$1,000 in item 8.....	300.00	
12.	Penalty of percent for delinquency in filing return.....		
13.	Interest at 6 percent per annum beginning August 1, 1938.....	48.17	
14.	Total Tax, Penalty, and Interest..\$	348.17	\$.....
M. J. Davis		Trustee	

Collector's Copy

B-1

[86]

LAW

Section 601, Revenue Act of 1938

(a) * * * *

(b) For each year ending June 30, beginning with the year ending June 30, 1938 there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply—

- (1) to any corporation enumerated in section 101 of this Act;
- (2) to any insurance company subject to the tax imposed by section 201, 204, or 207 of this Act.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the

same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(f) (1) The adjusted declared value shall be determined with respect to 3-year periods beginning with the year ending June 30, 1938, and each third year thereafter. The first year of each such 3-year period, or, in case of a corporation not subject for such year to the tax imposed by this section, the first year of such 3-year period for which the corporation is subject to the tax, shall constitute a "declaration year."

(2) For each declaration year the adjusted declared value shall be the value, as declared by the corporation in its return for such declaration year (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending with or prior to the close of such declaration year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

* * * * *

(5) For each year of any 3-year period subsequent to the declaration year, the adjusted declared value in the case of a foreign corporation shall be the value declared in the return for the declaration year adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner with the approval of the Secretary,

to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

*	*	*	*	*	*	*
(g)	*	*	*	*	*	*

(h) The capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, shall not apply to any taxpayer with respect to any year after the year ending June 30, 1937.

Section 602. Excess-Profits Tax

(a) If any corporation is taxable under section 601 with respect to any year ending June 30, there is hereby imposed upon its net income for the income-tax taxable year ending after the close of such year, an excess-profits tax equal to the sum of the following:

Six per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

Twelve per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

(b) The adjusted declared value shall be determined as provided in section 601 as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). If the income-tax taxable year in respect of which the tax under this

section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purposes of this section the net income shall be the same as the net income for income tax purposes for the year in respect of which the tax under this section is imposed, computed without the deduction of the tax imposed by this section, but with a credit against net income equal to the credit for dividends received provided in section 26 (b) of this Act.

(c) All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

(d) The excess-profits tax imposed by section 106 of the Revenue Act of 1935, as amended, shall not apply to any taxpayer with respect to any income-tax taxable year ending after June 30, 1938. B-2 [87]

A revenue agent's examination has recently been made dated May 22, 1940 (IT:R) wherein a deficiency of \$8,885.04 is proposed consisting of \$5,223.57 income tax and \$3,661.47 excess profits tax for the calendar year 1938. The basis of this proposed assessment is that taxpayer was an association taxable at corporate rates.

Taxpayer proposes to resist the foregoing as-

assessment because those who purchased the property which constitutes the basis of the within declaration had no intention of forming a business unit to conduct their affairs and consequently do not admit that they are taxable as a corporation. They did not think that they were so taxable at the time when capital stock tax returns were due on July 31, 1938 and therefore their failure to file a return was not willful but was due to reasonable cause.

This return together with the payment of tax is made for the purpose of protecting taxpayer against the eventuality of its failing to overcome the proposed assessment and is not intended to be, and is expressly not an admission that taxpayer now is or ever has been taxable as a corporation or other legal entitl. B-3 [88]

[Title of Board and Cause.]

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE U. S. BOARD OF TAX
APPEALS.

United States Post Office and Court House Building,
Los Angeles, California, February 4, 1942,
10:00 o'clock a. m.

Before: Hon. John M. Sternhagen.

Met pursuant to notice.

Appearances:

William L. Kumler, Esq., 1104 Pacific Mutual

Building, Los Angeles, California, appearing for Helm and Smith Syndicate, Petitioner.

E. A. Tonjes, Esq., appearing for the Commissioner of Internal Revenue, Respondent. [90]

PROCEEDINGS

The Member: The first case on this morning is the Helm case, isn't it?

Mr. Tonjes: We are ready, your Honor.

The Member: Docket No. 107,125, Helm & Smith Syndicate. Who appears for the Petitioner?

Mr. Kumler: William L. Kumler, your Honor.

The Member: And for the Respondent?

Mr. Tonjes: E. A. Tonjes for the Respondent.

The Member: Proceed, sir.

STATEMENT OF CASE ON BEHALF OF PETITIONER

Mr. Kumler: If your Honor please, there are three issues to be decided in this proceeding. The principal issue in the case involves the question of whether 9 individuals who purchased undivided interests in certain potential oil lands are taxable as an association at corporate rates.

In December of 1936——

The Member: What do you mean whether they are taxable at corporate rates? Is the question whether or not they are an association?

Mr. Kumler: Whether they are an association, your Honor.

In December 1936, Mr. L. G. Helm and Mr. Smith, who were residents of Bakersfield, California, were engaged by the Superior Oil Company to purchase certain lands in the San Joaquin Valley. In the course of their duties they discovered [92] the Miller & Lux Land Company—Miller & Lux Inc., rather—which was the seller of the land purchased by the Superior Oil Company, had additional land in the area, about 2400 acres, which was available for sale at some \$15 an acre.

Mr. Helm put a deposit on the land in San Francisco with Miller & Lux with the understanding that the property could be purchased for \$15 an acre, and returned to Bakersfield where he contacted some 8 of his friends and told them that he believed the land had potential oil value. As a result of his opinion and his discussions with them, they each supplied him with a thousand dollars—approximately a thousand dollars—which he used to make a down payment on the land, 2400 acres.

He then requested Miller & Lux to execute or to prepare, rather, their usual form of conditional sales contract which required a down payment of 25 per cent and the balance payable in equal installments over a period of 10 years with interest. He made the down payment of 25 per cent with the money contributed by his friends.

This land, as I say, is in the San Joaquin Valley and is marginal land suitable only for sheep graz-

ing. Some of it has potential oil value. As was the case—or rather, as did the previous owners, Mr. Helm leased the land for sheep grazing purposes and that constituted the first transaction that he had with respect to the land. [93]

Now, at the time he obtained this money from his friends, Mr. Smith gave no receipt for the money and there were no written documents evidencing the agreement between the parties entered into. Mr. Helm took title to the land in his own name. Two of the 8 co-purchasers with Mr. Helm were officers of an Abstract Company, and by nature title conscious. They felt some evidence of their ownership and interest in this should be placed in the public records to protect them in the event Mr. Helm died or became incompetent and because of the fact it would be difficult to prove their interests if such event occurred. A declaration of trust was prepared by Mr. George Bradford, one of the co-purchasers, and it was executed by Mr. Helm as the declarant and by the other 8 co-purchasers as beneficiaries. It set forth the fact that the purchase of the land had been for the benefit of all the parties, among other things, and provided certain things which the instrument is the best evidence of.

Shortly after that time certain agriculturists, Lewis Brothers, approached Mr. Helm and suggested by reason of the fact there was additional water in the area that year the land could be farmed under dry farming processes and they offered to

lease the land on a crop-share basis. Mr. Helm did so again in his own name.

Shortly after that time, about the beginning of 1938, there were new discoveries of oil in the San Joaquin Valley [94] in Kern County and Mr. Helm entered into negotiations with certain oil companies, 5 to be exact. The parties reached an agreement to lease the land which I have referred to to these oil companies in various portions for the purpose of producing oil therefrom if it should be found to exist. In this case also Mr. Helm conducted the negotiations and executed the leases as an individual, not disclosing the interest of the other parties. These leases were put in escrow to await consummation and the leases provided for certain bonus payments.

While they were in escrow, it was discovered that the land was held by Mr. Helm as trustee by reason of the fact that this original trust declaration had been entered into and filed of record. The escrow company refused to consummate the transaction until this matter of trust should be cleared up. Mr. Helm should act as trustee or satisfy the escrow company. So instead of re-executing the agreement as trustee, the parties all got together—that is, the co-purchasers of the land including Mr. Helm got together—and revoked the original declaration of trust. Then Mr. Helm and the oil companies consummated the oil leases and the escrow was completed and the bonus payments made to Mr. Helm and leases delivered to the oil companies.

After that and in about July of 1938 the co-purchasers again felt that some record should be made of the interests [95] of those 8 parties who were not named in the instruments covering the title to the land, so they re-executed a declaration of trust and filed that for record, the purpose being the same as the execution of the original declaration of trust, to protect their interests in the event of the death or incompetency of Mr. Helm.

From that time forward until the present time the trustees' duties had been limited to collecting the sheep grazing rentals and such crop-shares as there were from time to time. No further payments have been made under the leasing agreement since the bonuses were paid. No exploratory wells have been drilled by either the lessors or the lessees.

The second issue in the case is dependent, of course, upon the determination of the one just discussed. If this group of individuals is an association taxable at corporate rates, the question—

The Member: Now, the Commissioner, I take it, has held that it is?

Mr. Kumler: He has so determined, your Honor.

The Member: And you are contesting that?

Mr. Kumler: Yes.

If it is held to be such an association, question arises as to whether a delinquent capital stock tax return is sufficient to give the association credit necessary to wipe out the excess profits tax. The declaration in the delinquent [96] capital stock tax

is sufficient to do so if required by law. That matter has already been before the Board and the courts, on a number of occasions. I don't believe it requires any discussion at this time.

The Member: What is the leading case on that?

Mr. Kumler: I think the leading case is the Del Mar case.

The Member: Yes, that is right.

Mr. Kumler: Del Mar additions.

The third issue of the case is whether or not a single sale of one portion of this property to a single individual at or about the same time as the leases were executed with the oil companies is a sale under circumstances which show that the property was held as stock in trade. It is necessary to make that determination because if the group is held not to be an association, question arises as to whether or not the taxpayers are permitted to apply the limitations of Section 117 of the Revenue Act of 1938 limiting the taxable amount of the capital gain. We feel that the documents themselves are the best evidence of the reason for which this property was acquired, and that a single sale of property acquired to be held for leasing for oil purposes is not indicative of an intention to hold that property for sale to customers.

The Member: That is, you are contending for the Capital [97] Gain character——

Mr. Kumler: Yes, your Honor.

The Member: ——and the Commissioner has determined that ordinary gain is the way it should be treated?

Mr. Kumler: Yes, your Honor, on the assumption that it is stock in trade not subject to capital gain limitations.

I think that about summarizes the Petitioner's position, your Honor.

Mr. Tonjes: In view of that statement, your Honor, I don't think the Respondent need say a great deal. Of course, our position is that, considering the circumstances under which this organization was organized—it was organized, I think, unquestionably for the purpose of making profit and deriving a gain—that it is so similar in its characteristics, its organization and operation, that it is substantially functioning as a corporation and for that reason is taxable as an association.

The Member: Mr. Kumler, you say it is a trust, do you?

I just want to interrupt a second, Mr. Tonjes.

Mr. Kumler: One of the questions in the case, your Honor, as you will recall from my opening statement, the trust was originally executed. Then it was——

The Member: You have to take an affirmative position, do you not, as to what it is; not merely as to what it isn't, but also as to what it is? [98]

Mr. Kumler: If we were compelled to take such an affirmative position at this time, your Honor, I think the definition of this group would be more properly a joint venture because of the limited character or the purposes for which it was formed.

The Member: Do you think you do not have to take an affirmative position?

Mr. Kumler: I don't think I had better say that, your Honor. I believe we do have to take an affirmative position, that that is the position.

The Member: I see.

Mr. Kumler: In all such cases, there is some confusion in the matter of determining just what it is because obviously it purports to be something and the Respondent is taking the position that it is something else.

The Member: Well, you filed a return——

Mr. Kumler: On the partnership form.

The Member: ——as what? As a syndicate?

Mr. Kumler: Yes, your Honor.

The Member: And treating a syndicate, as you understand, as one of those things that is like a partnership?

Mr. Kumler: Yes, your Honor.

The Member: And therefore you filed a partnership return?

Mr. Kumler: Yes. [99]

The Member: Is that right?

Mr. Kumler: That is correct, sir.

The Member: Now, are you pressing that character as the correct character?

Mr. Kumler: Yes, your Honor.

The Member: I see.

The Commissioner said it is an association——

Mr. Kumler: Yes.

The Members: ——taxable as a corporation?

Mr. Kumler: Yes.

The Member: And you say no, that you filed the correct return and you insist upon that?

Mr. Kumler: That is correct, sir.

The Member: I see; that is what I wanted.

Mr. Tonjes: With respect to the remaining issues, namely—well, the next one in order, I presume, would be the issue of whether or not the organization is subject to an excess profits tax or is entitled to such relief as it would be entitled to by reason of having filed a capital stock tax return; and we have attached to the stipulation a copy of the return and a statement that the tax shown thereon has been paid. I think the law on that subject is fairly well crystallized that under the circumstances the filing of a return constitutes an action which would give them a credit.

With respect to the issue of whether or not the capital [100] gain limitation applies, I think counsel has stated the issue clearly in that, and the facts which we have stipulated to will give the Board all the light it needs.

I might say we have included in the stipulation a copy of the returns filed, that is, the partnership returns, which set forth all of the business carried on by the organization, and we also have included the capital stock tax return. They are in all 14 exhibits.

We have attempted to make a complete statement of the manner in which this organization carried on its business so as to give the Board all the information it needs with regard to its functions.

The Member: All right; make your case, Mr. Kumler.

Mr. Kumler: If your Honor please, I would like to offer this stipulation in evidence, and ask that the facts stated in the exhibits attached to the stipulation referred to be received by the Board with the same force and effect as though they had been submitted and received as evidence in open hearing.

The Member: Hand it to the clerk.

Mr. Tonjes: In view of the fact that the exhibits have not been stapled together, your Honor, it might be advisable at this time to have the clerk check all of the numbers and see that they are all complete. There are 14 exhibits altogether, two being the income tax returns. [101]

The Member: Are they exhibits as a part of the stipulation or are they filed as exhibits that the clerk has to mark separately?

Mr. Tonjes: As a part of the stipulation, your Honor.

The Member: So he doesn't have to mark anything except the entire stipulation?

Mr. Tonjes: That is correct.

The Member: All right.

Mr. Tonjes: I merely wanted to have him ascertain the fact they are all present there, not being stapled together.

The Member: If you say that they are all there, he will put an elastic around them and keep them that way.

Mr. Tonjes: Very well, your Honor.

The Member: Anything more, Mr. Kumler?

Mr. Kumler: That constitutes all the evidence, your Honor.

The Member: Have you anything, Mr. Tonjes?

Mr. Tonjes: Nothing further, your Honor.

The Member: Do you want to file a brief in accordance with the rules?

Mr. Tonjes: Yes.

The Member: All right.

The case is submitted.

(Hearing concluded.)

[Endorsed]: U. S. B. T. A. Filed Feb. 18, 1942.

[102]

[Title of Court and Cause.]

PETITION OF TAXPAYERS FOR REVIEW
BY THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT OF A DECISION BY THE TAX
COURT OF THE UNITED STATES

The individuals treated by the Commissioner of Internal Revenue as an "Association" for tax assessment purposes and known as "Helm and Smith Syndicate," by Thomas R. Dempsey, Wellman P. Thayer, Arthur H. Deibert and William L. Kumler, their counsel, hereby file their petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the Decision of the Tax Court of the United States entered on September 10, 1942, and determining deficiencies in petitioners'

Federal income and excess profits taxes for the calendar year 1938, in the amounts of \$5,223.57 and \$30.73 respectively.

Petitioners respectfully show:

I.

JURISDICTION

Petitioners are a group of unincorporated individuals known as "Helm and Smith Syndicate." Their address is 1704 Chester Avenue, Bakersfield, California, c/o M. J. Davis. For the calendar year 1938 said group filed a Federal income tax return on partnership Form 1065, with the Collector of Internal Revenue at Los Angeles, California. Respondent determined that deficiencies in income and excess profits taxes were due from petitioners [103] for the calendar year 1938 and on appeal to the Tax Court of the United States, the Tax Court sustained, by a decision entered on September 10, 1942, in part, respondent's said determination.

Jurisdiction in this Court to review the decision of the Tax Court of the United States is founded upon the provisions of Sections 1141-1146 of the Internal Revenue Code.

II.

NATURE OF THE CONTROVERSY

This controversy arises from a determination by respondent, Commissioner, that under Section 901 of the Revenue Act of 1938 this unincorporated

group, known as "Helm and Smith Syndicate," constituted an association taxable as a corporation. Upon such determination the respondent asserted deficiencies in corporation income and excess profits taxes, for the year 1938, in the amounts of \$5,223.57 and \$3,661.47 respectively.

Respondent's determination was appealed by the taxpayers to the Tax Court of the United States. The appeal was heard at Los Angeles, California, on February 4, 1942, and submitted upon a stipulation of all the facts. On June 26, 1942, the Tax Court entered its Memorandum Opinion sustaining respondent's determination that the taxpayers constituted an association, but holding that since the group had filed a capital stock tax return for the year ended June 30, 1938, the excess profits tax deficiency should be computed by taking the declared value shown therein into account. Pursuant to its said opinion and on September 10, 1942, the Tax Court entered its decision that there are deficiencies in income and excess profits taxes for the year 1938 due from petitioners, in the amounts of \$5,223.57 and \$30.73, respectively.

The group of taxpayers known as Helm and Smith Syndicate hereby [104] appeal to the United States Circuit Court of Appeals for the Ninth Circuit from so much of the Tax Court's decision as finds and decides that the group is an "association" within the meaning of section 901 of the Revenue Act of 1938.

During January of 1937, one L. G. Helm, believ-

ing certain land to have a speculative value for the production of oil, contacted eight of his friends and acquaintances and induced each of them to contribute \$1,000.00 toward a co-purchase of the land. Helm contributed \$1,000.00 on his own behalf making a total of \$9,000.00.

Upon receipt of the contributions of his friends, Helm purchased the land referred to under conditional sales contracts calling for down payments and annual payments on January 8th of each year thereafter until the entire purchase price had been paid.

Helm took title to the property in his own name without disclosing the interests of the other eight contributors. Helm had issued no receipts for the money he received, nor was there any written agreement evidencing the interests of the other eight contributors in the land. All nine parties, however, understood that Helm was taking their individual interests in the land in his name and would handle the property to the common advantage and profit of all.

Certain of the nine said individuals, however, felt that some written evidence of the interests of the parties should be placed on record. Accordingly, on June 29, 1937, a declaration of trust was executed by all the parties which recited, among other things, that L. G. Helm had purchased the land on behalf of the eight named individuals as well as himself; that each of the nine persons had purchased an undivided one-ninth interest in the land

and that [105] Helm held said land in trust to manage, control, sell, convey, lease, or encumber the same. No certificates of interest were provided for. No place of business was established by the instrument. A committee of four out of the nine co-owners was provided for to which the trustee was to look for advice and consent in selling, leasing or encumbering the land.

Notably, however, the instrument gave neither the trustee nor the committee any power to invest and reinvest the proceeds from any sale, lease or other disposition of the property, nor to enter into any business transaction, other than selling, leasing, encumbering or disposing of said land. Each member of the group expressly assumed and agreed to pay his share of any liability for principal and interest which might become payable under the purchase contracts or by reason of any encumbrances thereafter placed on the property including taxes and assessments. No assignment of the interest of any co-owner was valid unless and until the trustee received notice of the assignment together with the assumption by the assignee of the obligations of the assignor as to the interest so assigned.

Early in 1938, Helm, the trustee, negotiated with five oil companies looking toward oil leases of the land. Here, again, Helm carried on all negotiations in his own name without disclosing the trust or the interests of the other eight co-purchasers of the land. Leases were agreed upon between the oil

companies and Helm and placed in escrow. It was then realized that Helm held title as trustee.

In order to avoid the complexities of the trust arrangement the nine parties on May 24, 1938, revoked the trust of June 29, 1937, and Helm again took absolute record title in his own name. The leases were thereafter consummated and the escrows regarding them closed.

Upon consummation of the leases by Helm, the five oil companies paid [106] leasing bonuses totaling \$29,635.00. On or about July 1, 1938, Helm sold two parcels of the land to one, C. E. Houchin, realizing a profit of \$10,078.30 again dealing in his own and his wife's names. The foregoing income together with other minor items for the year 1938 is the basis of the tax deficiencies asserted by respondent.

With the proceeds from the sales and oil lease bonuses, L. G. Helm paid the balance of the purchase price due under the purchase contracts covering the land and received unconditional title thereto.

Thereafter, on July 15, 1938, the nine co-owners, desiring again to establish record title to their interests, executed a second declaration of trust covering the land subject to the leases referred to above. This declaration of trust was in substantially the same terms as the declaration of June 29, 1937, including the provisions for assumption by the various interest holders of any liabilities arising from any encumbrances placed on the property.

Except for small amounts of grazing and agricultural rentals no further income was realized from the land. No oil wells were, or to date have been, drilled on the land no oil royalties have become due or been received under the oil leases.

No regular place of business has been maintained and the only books kept by the venture were kept by Helm in his personal cash book.

It is apparent that there are two distinct periods in 1938 during which the legal relationship of the nine individuals were, for the purposes here in question, substantially different.

(A) During the period from May 24, 1938 to July 15, 1938 no express written trust agreement was in effect. The rights, powers and obligations of the parties necessarily would be those implied by California law from all the circumstances. It was during this period that the income giving rise to the [107] taxes in question was realized.

(B) During the periods January 1, 1938 to May 24, 1938, and from July 15, 1938 to December 31, 1938, express written trust agreements were in effect which defined the rights, powers and obligations of the parties and must constitute as the basis of any classification of the group.

It is the position of the taxpayers that, as a group, they did not constitute an association during either of the two periods for the following reasons:

(A) During the period when no express written trust agreement was in effect:

(1) There were not and could not have been any

transferable interests similar to shares of stock because none were created in fact or in law. The only assignable property held by any of the nine parties was his interest as an equitable co-owner of land, absolute record title of which was in L. G. Helm, his agent and co-purchaser.

(2) Since there was no attempt to limit their liability to the property embarked in the business, each of the co-owners was personally liable for any debts or obligations incurred by Helm, the active agent, if contracted within the scope of his authority.

(3) Death, or withdrawal of any of the nine co-contributors would have destroyed the venture, just as in the case of an ordinary agency, partnership or joint adventure because Helm's authority to act for such member would thereby have been revoked.

(4) Title to the land was held, as of record, by L. G. Helm absolutely; but actually he held title as an agent, partner or co-adventurer.

(5) Centralized management existed only to the extent that Helm acted as a common agent for all the co-owners of interests in the land. [108]

(B) During the periods when trust agreements were in effect there was no "association" within the meaning of the revenue laws because:

(1) Liability of each interest holder was unlimited since each, by executing the trust instrument, assumed and agreed to pay any liability for principal and interest arising out of any encumbrances placed on the property. Such encumbrances

included taxes, assessments, (by express provision) liens, mortgages, judgments and the like by necessary implication.

(2) No certificates or other transferable interests, similar to corporate stock were created. Each interest holder's right to assign his interest was merely that of any owner of property whose interest is evidenced by a written instrument. Even so, such assignment was subject to the conditions that the assignee give notice to the trustee and assume all the obligations of the assignor respecting the assignor's interest.

(3) Legal title was held by Helm as trustee, not in the name of "Helm and Smith Syndicate."

(4) As every trust under California law is revocable unless expressly made irrevocable, any one of the members of the group, had the power to revoke the trust as to himself and his interest in the land, and could thereby have withdrawn from and destroyed the venture.

The respondent's position can best be ascertained from his statement in his brief before the Tax Court that the nine individuals comprising the syndicate, "* * * associated themselves and their resources and entered into a common effort for the conduct of a business for profit; that the rights and obligations of the beneficiaries are similar to those of a stockholder of a corporation, and that the petitioner operated substantially as, and served the purpose of, a corporation during the taxable year, * * *."

The Tax Court's decision is based upon the position that while the [109] instant case is "border line" the syndicate here is more like the taxpayer in *Thrash Lease Trust v. Commissioner*, 99 Fed. (2d) 925.

The taxpayers therefore view the controversy thus:

If this is a border line case, how—(1) where liability of the participants was not limited to the property embarked in the business, and (2) where, when the income was realized, there was no trust agreement defining the rights and obligations of the parties, and (3) where one person, holding absolute record title to land in his own name, acts for his undisclosed co-owners of land, and (4) where death or withdrawal of any of the co-owners would have revoked the agency and destroyed the venture, and, (5) where the only assignability of interest was even less than the right to assign, which every owner of property has,—can it be said that the nine individuals here either resorted to or enjoyed the benefits of the corporate form of organization either in form or in substance?

III.

Your petitioners, being aggrieved by the findings of fact and conclusions of law contained in said decision and opinion of the Tax Court of the United States desire to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

IV.

In making its decision, as aforesaid, the Tax Court of the United States committed the following errors upon which your petitioners rely as the basis of this proceeding:

(1) The Tax Court erred in failing and omitting to find from stipulated evidence establishing the same that the rights, powers, privileges and obligations of the nine members of the group were substantially and materially different during the period from May 24, 1938 to July 15, 1938, (during which [110] period no trust agreement was in effect and in which the income here involved was realized) than were the rights, powers, privileges and obligations of said members during the portions of the year 1938 in which trust agreements were in effect.

(2) That with respect to the period during which the income in question was realized, namely period from May 24, 1938 to July 15, 1938, during which no express trust agreement was in effect as between the members of the group:

(a) The Tax Court erred in failing and omitting to make any finding of fact from the evidence as to the personal liabilities and obligations of the nine members of the group for debts and obligations incurred by Helm in the management of the property.

(b) The Tax Court erred in failing and omitting to find from evidence sufficient to support the same, that during said period the nine members

of the group were personally liable for any debts and obligations incurred by Helm in the management of the property.

(c) The Tax Court erred in finding and concluding that during said period the interests of the nine members of the group were divisible and assignable as in the case of corporate stock and in failing and omitting to find and conclude from the evidence that during said period the interests of the nine members of the group were divisible and assignable only to the extent that the interests of any co-owner of property or partner are divisible and assignable.

(d) The Tax Court erred in failing and omitting to find and conclude from the evidence that during said period any member of the group could have revoked Helm's authority to act for him and could have withdrawn therefrom, and that the death, or assignment of the interest of any member of [111] the group would have revoked the authority of L. G. Helm to bind such member and that the venture would thereby have been destroyed.

(e) The Tax Court erred in failing and omitting to find and conclude from the stipulated evidence that during said period L. G. Helm held absolute record title to the land owned by the nine individual members of the group, as their managing agent, co-partner or co-adventurer, for the purpose of entering into transactions with respect to which the said members were to share equally the profits and losses therefrom.

(f) The Tax Court's findings and conclusions that during said period the taxpayer-group had substantially the attributes of a corporation, are contrary to the stipulated evidence and are not supported by any evidence.

(3) That with respect to the periods during which express trust agreements were in effect as between the members of the group, namely the periods from January 1, 1938 to May 24, 1938 and from July 16, 1938 to December 31, 1938:

(a) The Tax Court erred in failing and omitting to find from the stipulated evidence that by express agreement the members of the group had assumed and agreed to pay the amount of any liability for principal and interest incurred by Helm in the performance of his duties.

(b) The Tax Court erred in finding that the interests of the members of the group were divisible and assignable in a manner similar to corporate stock and in failing and omitting to find from the stipulated evidence that the interests of the members of the group were divisible and assignable only upon the assumption by the assignee of the obligation of the assignor to pay the amount of any principal or interest for which such assignor might be liable with respect to the interest assigned.

(c) The Tax Court erred in failing and omitting to find and [112] conclude from the stipulated evidence that during said periods, any member of the group, as a trustor under the trust agreement, had the power to revoke the trust as to him-

self and his interest in the property and could have withdrawn from the group.

(d) The Tax Court erred in finding from the evidence that the trust instrument of June 29, 1937, was revoked for convenience in title insurance and in failing and omitting to find from the evidence that said trust instrument was revoked because the members of the group did not wish to do business pursuant to the terms of said trust.

(4) The Tax Court erred in finding and concluding from the evidence that the fact that title to the property, owned by the members of the group, was held in one name establishes association status.

(5) The Tax Court erred in failing to find and conclude, as a matter of law, that the group was either (1) a tenancy in common acting through a common agent, or (2) a joint adventure, or (3) a general partnership.

(6) The Tax Court erred in finding and concluding, as a matter of law, that petitioner syndicate was an association like the taxpayer in *Thrash Lease Trust v. Commissioner*, 99 Fed. (2d) 925.

(7) The Tax Court erred in finding and concluding, as a matter of law, that petitioner syndicate had such attributes and characteristics as would bring the group within the definition of an "association" as that term is used in Section 901 of the Revenue Act of 1938.

(8) The Tax Court erred in finding and concluding that there are deficiencies in income and

excess profits taxes due from petitioners for the year 1938.

Wherefore petitioners pray that this Honorable Court may review the [113] decision and order of the Tax Court of the United States and reverse, modify or set aside the same, and for the entry of such further orders and decisions as the Court shall deem meet and proper in accordance with the law.

THOMAS R. DEMPSEY
WELLMAN P. THAYER
ARTHUR H. DEIBERT
WILLIAM L. KUMLER

Counsel for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California

(Duly Verified.)

[Endorsed]: Filed Dec. 7, 1942. [114]

[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Washington, D. C.

Please take notice that petitioner, on the 7th day of December, 1942, filed with the Clerk of the Tax Court of the United States at Washington, Dis-

trict of Columbia, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated: December 7, 1942.

THOMAS R. DEMPSEY

WELLMAN P. THAYER

ARTHUR H. DEIBERT

WILLIAM L. KUMLER

Counsel for Petitioner,

1104 Pacific Mutual Building,
Los Angeles, California

Service of petition for review and the above notice is acknowledged this 7th day of December, 1942.

By J. P. WENCHEL

Attorney for Respondent

[Endorsed]: Filed Dec. 7, 1942. [115]

United States Circuit Court of Appeals
For the Ninth Circuit

Docket No. 107125

HELM and SMITH SYNDICATE,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

DESIGNATION OF CONTENTS OR RECORD
ON REVIEW

To: B. D. Gamble, Clerk, the Tax Court of the
United States:

Will you kindly prepare in accordance with the law and rules of said Court, a transcript of the record in the above entitled cause, such record to include:

(1) The docket entries of the proceedings before the Tax Court;

(2) The material pleadings before the Tax Court;

(3) The Memorandum Opinion of the Tax Court; entered June 26, 1942;

(4) The decision of the Tax Court entered September 10, 1942;

(5) The Stipulation of Facts entered into by petitioner and respondent before the Tax Court together with all exhibits referred to therein and attached thereto;

(6) The reporter's official report of the proceedings before the Tax Court;

(7) The Petition for Review by the United States Circuit Court for the Ninth Circuit of the decision of the Tax Court of the United States and the Notice of Filing Petition for Review.

(8) This Designation of Contents of the Record on Review.

Dated this 14th day of December, 1942. [116]

THOMAS R. DEMPSEY
WELLMAN P. THAYER
ARTHUR H. DEIBERT
WILLIAM B. KUMLER

Counsel for Petitioner on Review,
1104 Pacific Mutual
Building, Los Angeles,
California,

Personal service of the above Designation of Contents of Record on Review is hereby acknowledged this 15th day of December, 1942.

J. P. WENCHEL

Counsel for Respondent on
Review

[Endorsed]: Filed Dec. 15, 1942. [117]

The Tax Court of The United States
Washington

Docket No. 107125

HELM and SMITH SYNDICATE,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 117, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 2d day of January, 1943.

[Seal]

B. D. GAMBLE

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 10352. United States Circuit Court of Appeals for the Ninth Circuit. Helm and Smith Syndicate, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed January 19, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10352

HELM and SMITH SYNDICATE,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

POINTS UPON WHICH PETITIONER WILL
RELY UPON REVIEW

I.

Upon review of the above entitled proceeding, petitioner will rely upon the points raised by the assignments of error set forth in Section IV of its

Petition for Review of the Decision of the Tax Court of the United States.

Dated this 27 day of January, 1943.

THOS. R. DEMPSEY
WELLMAN P. THAYER
ARTHUR H. DEIBERT
WILLIAM L. KUMLER

Attorneys for Petitioner,
1104 Pacific Mutual Build-
ing, Los Angeles, California

Personal service of the above statement of Points Upon Which Petitioner Will Rely Upon Review is hereby acknowledged this 8th day of February, 1943.

J. P. WENCHEL

Chief Counsel, Bureau of In-
ternal Revenue

[Endorsed]: Filed Feb. 15, 1943.